

Report on the

BOARD OF FUNERAL SERVICE

Montgomery, Alabama



Department of Examiners of Public Accounts

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September 9, 2008

Representative Howard Sanderford
Chairman, Sunset Committee
Alabama State House
Montgomery, AL 36130

Dear Representative Sanderford:

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the **Board of Funeral Services** in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the **Board of Funeral Services** in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

Ronald L. Jones
Chief Examiner

Examiner
Tony Yarbrough

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PROFILE

Purpose/Authority:

Act 214, *Acts of Alabama 1975*, codified as the *Code of Alabama 1975*, Sections 34-13-1 through 34-13-152 created the Alabama Board of Funeral Service to regulate procedures for making final disposition of human dead, including embalming and funeral directing. Act 2006-608, *Acts of Alabama 2006*, codified as the *Code of Alabama 1975*, Section 22-19-5 requires the board to approve an identification system for dead human bodies to be followed by funeral establishments.

Board Characteristics:

Members and Selection	Seven (7) members. Appointed by the governor from a list of three nominees selected by the licensees of the board. Only one licensed funeral director from each establishment may vote for a nominee. Code of Alabama 1975, Section 34-13-20.
Term	Two year terms. May be reappointed for one additional two year term. No person shall serve for more than four years. Code of Alabama 1975, Section 34-13-20.
Qualifications	United States citizen and Alabama resident. Four must be licensed, practicing embalmers for the last ten consecutive years immediately preceding appointment, Three must be licensed, practicing funeral directors for the last ten consecutive years immediately preceding appointment, Members must continue active practice during terms. Code of Alabama 1975, Section 34-13-20
Racial Representation	Not more than four members may be members of the same race. Current Membership is: 3 Black 4 White Code of Alabama 1975, Section 34-13-20.
Geographical Representation	Members must represent the seven congressional districts. Each of the current members represents one congressional district. Code of Alabama 1975, Section 34-13-21.
Consumer Representation	No statutory requirement.

Other Representation	No other specific representation required.
Compensation	Necessary traveling expenses and the necessary expenses incident to attendance upon the business of the board. \$50.00 per day, not to exceed 10 days per year. Code of Alabama 1975, Section 34-13-23

Operations

Administrator	Warren S. Higgins, Executive Secretary Appointed by the board. Current annual salary \$60,727.68. Salary set by the board. Receives necessary traveling and other incidental expenses as incurred in the performance of his duties. Code of Alabama 1975, Section 34-13-23
Location	Alabama Statehouse 11 South Union St., Suite 21 Montgomery, AL 36130
Examinations	National funeral director and embalmer examinations are compiled and graded by the Conference of Funeral Service Examining Boards. (See Significant Items). Given quarterly (in Montgomery) Examination fee is, not to exceed \$25 above the actual cost of preparing and administering the exam. All examinations are administered by the Alabama Board of Funeral Service. Code of Alabama 1975, Sections 34-13-22, 50, 57, 70, 72-73, and 90-94. The board was unable to provide pass/fail results.
Renewals	All licenses expire on October 1 of each year. Code of Alabama 1975, Section 34-13-53. The board may reinstate a lapsed license at its discretion, if application is made within six months and is accompanied by payment of all penalties and lapsed fees, from the time of the lapse to date of reinstatement. The penalty is \$25.00 to reinstate a lapsed license, Code of Alabama 1975, Section 34-13-55.

Licensees	<table><tr><th>Licensee Classification</th><th>Number of Licensees</th></tr><tr><td>Funeral Establishments</td><td>470</td></tr><tr><td>Funeral Directors</td><td>1,709</td></tr><tr><td>Embalmers</td><td>812</td></tr><tr><td>Apprentices</td><td>438</td></tr><tr><td>Total</td><td>3,429</td></tr></table>	Licensee Classification	Number of Licensees	Funeral Establishments	470	Funeral Directors	1,709	Embalmers	812	Apprentices	438	Total	3,429
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	Funeral Establishments	470											
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Total	3,429												
Reciprocity	The board may, but is not required to, recognize and issue, without examination and upon payment of a fee of \$100, reciprocal licenses for funeral directing and embalming, if the board determines that the applicant's qualifications meet or exceed Alabama's minimum qualifications and that a written examination would be superfluous. Code of Alabama 1975, Section 34-13-51												
Continuing Education	No statutory requirement. Of the surrounding states, only Alabama and Mississippi do not require continuing education as a condition of license renewal.												
Employees	Three at-will employees (non-merit system, no contract).												
Legal Counsel	Jeffery H. Long, Assistant Attorney General												
Subpoena Power	The board can subpoena witnesses. No mention of the subpoena of records is made in the board's licensing law. Code of Alabama 1975, Section 34-13-26(d).												
Internet Presence	None.												
Attended Board Member Training	Two current board members (Debbie Martin and Tony Taylor), the executive secretary, and the associate secretary attended the training on August 23, 2006.												

Financial

Source of Funds	Licensing fees, examination fees, inspection fees, and penalties.
State Treasury	The board operates through the State Treasury (Fund 0362).
Unused Funds	<p>The board retains remaining fund balances at year end.</p> <p><i>Code of Alabama 1975</i>, Section 34-13-23(h).</p>

SIGNIFICANT ITEMS

There are no current significant items.

STATUS OF PRIOR FINDINGS & SIGNIFICANT ITEMS

1. **Finding:** Backup copies of pertinent electronic information related to the daily operating activities of the board are kept only in the board's offices. The practice of maintaining backup information in the same office as the original information unnecessarily increases the risk of total loss of the information should the board's offices suffers damage.

Current Status: Resolved. ISD personnel confirmed that the board has offsite storage procedures. Backups are stored on the ISD file server located at the Administrative Folsom Building in Montgomery. Everything contained in the executive secretary's My Documents folder is backed up, including receipts, expenditures and licensee rosters.

2. **Finding:** The board did not ensure that public notice was given for any of its meetings prior to January 16, 2006, after which notice was not given in a timely manner. According to the board's staff, notice of its meetings was faxed to the Montgomery Advertiser newspaper during the 2004 and 2005 fiscal years. However, the board did not follow up to ensure that the notices were actually published. We found no evidence the notices had been published. Consequently, notice of board meetings required by the state's open meetings law was not accomplished. On October 1, 2005, a revised state open meetings law became effective. A feature of this law is an Internet website at the office of the Secretary of State on which meetings of boards and commissions are required to be posted. The board properly posted its January 16, 2006 meeting on the website. However, subsequent posting of meetings has not been timely. The board's records indicate that although the board may set its meeting date up to two months in advance, notice is not given until eight days before the meeting. The *Code of Alabama 1975*, Section 36-25A-3(b) of the Open Meetings Act requires that meetings of the board, "*shall be posted as soon as practicable* after the meeting is called and in no event less than 24 hours before the meeting is scheduled." The term 'practicable' means as soon as reasonably capable of being accomplished.

Current Status: Unresolved. A search of the Secretary of State's website for meeting notices shows that the board continues not to post meetings as soon as practicable. The number of days notice given varies but usually is 8 days. The board's executive secretary stated that the board has not given an earlier public notice because the time and room number of the meeting is subject to change based upon the availability of space in the State House that becomes available for them to use, especially when the legislature is in session. The notice could be posted when the meeting is called and amended when necessary.

3. **Finding:** The board failed to file required annual records management reports for the years 2005 and 2006 with the State Records Commission. Once the State Records Commission has approved an RDA (Records Disposition Authority) for an agency, which includes an approved schedule for the retention and destruction of records, and the agency has signed it, the agency is required to submit an annual report of its records management activities to the commission. The board did not file the annual reports.

Current Status: Unresolved. The executive secretary stated in a conversation on 6/23/08 that the board had filed an annual records management report the first year after they acquired an RDA. According to the executive secretary, the Dept. of Archives told the board that they would not renew the RDA because the board had not followed the schedule for the retention and destruction of records.

4. **Finding:** Blank, pre-numbered licenses were stored in plain site within the office; not always locked in a secure location. This practice increases the risk that blank licenses could be misplaced or stolen from the office, and sold or improperly used.

Current Status: Resolved. All blank, pre-numbered licenses are stored in a locked file cabinet when not in use.

5. **Finding:** Amounts received were not always timely deposited, thereby unnecessarily increasing the risk of loss or misuse of state funds. Eighty-five amounts received for deposit were sampled. Twenty-three were deposited in excess of seven days after receipt. Of these, two were deposited 100 days after receipt. The average time for a deposit was eleven days.

Current Status: Unresolved. The board continues to make untimely deposits of receipts. A sample of deposits indicated that the average number of days until deposit is 28 days.

6. **Finding:** The board charges its' licensees a bad check fee of \$30, but has no administrative rule stating that it is the board's decision to charge this amount. State law in *Code of Alabama 1975*, Section 8-8-15 provides authority for state agencies to charge a bad check fee of up to \$30, but leaves the actual amount to be charged at the discretion of the agency. To implement the board's decision to charge a specific amount, the board must process an administrative rule to that effect utilizing procedures named in the state's Administrative Procedure Act.

Current Status: Unresolved. The board has not complied in providing an administrative rule stating its decision to charge a \$30 bad check fee.

7. **Finding:** There is no separation of duties concerning receipt and disbursement of funds. Duties should be separated so as to create a condition in which diversion of assets for improper use cannot occur without coming to the attention of other persons in the normal course of their duties. Management is responsible for establishing a system of internal procedures to provide reasonable, but not absolute, assurance that assets are safeguarded from unauthorized use or disposition.

The board employs three persons to carry out its administrative duties. The executive secretary is responsible for receiving funds, recording the receipt of funds, preparing deposits and taking the deposits to the bank, with no review by another person. The executive secretary performs all duties concerned with the disbursement of funds, including requisitioning, purchasing, processing payments arising from invoices, recording disbursements transactions into the accounting records, and receiving purchased goods or services. This condition unnecessarily increases the risk of loss or misuse of funds.

Current Status: Unresolved. The condition remains unchanged.

8. **Finding/Significant Item:** The board does not collect the Social Security number of applicants who apply for establishment licenses, as required by law. The *Code of Alabama 1975*, Section 30-3-194, “Alabama Child Support Act of 1997” states that, “Any agency charged with the administration of any law concerning the issuance or renewal of a license, certificate, permit, or other authorization to engage in a profession, occupation, or commercial activity shall require all applicants for issuance or renewal of license, certificate, permit, or other authorization to provide the applicant’s social security number to the agency, which agency shall record the social security number on the application and related records maintained by the agency.” In addition, Attorney General’s opinion 2004-22 to the Alabama Surface Mining Commission, states in its conclusion: “The Commission must require the social security number of the individual or individuals in a corporation, partnership, or limited liability company who is required to make application for a license for that entity.”

Current Status: Unresolved. A review of the last five new establishment applications recorded by the board as of 7/16/08 found that the applications have not changed and the board is not requiring applicants to submit their social security numbers. The board has changed the establishment renewal application to capture the social security numbers but not the original application.

9. **Finding:** The board does not always pay its debts on a timely basis. Thirty-one percent (80) of payment vouchers were for billings over 30 days past the invoice date. On two occasions, the Department of Finance sent the board a message requesting the board to expedite payment. Ensuring timely payment of invoices makes discounts available and decreases the likelihood of making a duplicate payment from an additional invoice. The Attorney General’s Office stated in opinions 83-432, 92-74, and 93-266 that, “State agencies are strongly urged to take steps necessary to ensure prompt payment of bills.”

Current Status: Unresolved. The board continues to make untimely payments on disbursements.

10. **Finding/Significant Item:** The board has not taken concrete steps to create by rule an identification system for dead human bodies to be used by funeral establishments. Act 2006-608, passed in April 2006 and effective July 1, 2006 (codified as *Code of Alabama 1975*, Section 22-19-5) requires funeral establishments to utilize an identification system for dead human bodies that is approved by the board. As specified in the act, “The identification system may include any dignified method, including, but not limited to, an arm band or wrist band that will identify the body until the body is transferred to another entity or until final disposition.”

The board discussed the identification system in its meeting of April 26, 2006, and the minutes of the meeting record that a board member moved that the board exercise its authority to approve identification methods by allowing non-detachable ankle bracelets. The motion was seconded, but minutes do not record that a vote occurred. Minutes of later meetings do not record that this issue was subsequently considered.

Current Status: Unresolved. The board has not approved an identification system for dead human bodies.

11. **Finding/Significant Item:** The board's records do not show that inspections of all licensed funeral homes were made annually, as required by law. The *Code of Alabama 1975*, Section 34-13-111 (b) states "All funeral establishments and branches shall be inspected by the board, or its representatives, at least once annually." A review of inspection logs for the 2005 and 2006 fiscal years revealed 25 funeral establishments that were recorded as having been inspected only once during the two-year period.

Current Status: Unresolved, but improved. A review of the inspections performed by the board in the 2007 fiscal year revealed that two funeral establishments were not inspected as required by law.

12. **Finding/Significant Item:** The board was unable to provide a record containing the registered name and business address of each licensee along with the number, date of license, and date of each renewal, as required by law. The board maintained a separate folder containing the information for each licensee but could not produce a record that contained the statutory information for all of them. In addition the board could not provide a pamphlet containing its licensing law, its rules and regulations, and a current list of all licensed persons and establishments, as required by law.

The *Code of Alabama 1975*, Section 34-13-23 (e) states that, "The executive secretary of the board shall keep a record in which shall be registered the name and business address of every person to whom licenses have been granted in accordance with this chapter, the number and date of the license and the date of each renewal."

In addition, the *Code of Alabama 1975*, Section 34-13-4 states that, "Upon request, the board shall distribute to funeral directors, embalmers and apprentices and such other persons as may be interested therein, in pamphlet form, the provisions of this chapter together with all rules and regulations prescribed, adopted or promulgated pursuant to this chapter, together with a complete and current list of all persons and establishments licensed under this chapter."

Current Status: Unresolved. The board maintains an Excel spreadsheet containing the names of all licensees. However, the spreadsheet does not capture the date of original licensure or the date of renewal. In addition, the board does not keep in pamphlet form the provisions of their statutory authority and rules and regulations.

13. **Finding/Significant Item:** The board requires its applicants for licensure as funeral directors or embalmers to be United States citizens, as required by state law. The state law may be unconstitutional. The *Code of Alabama 1975*, Section 34-13-72 states, "An applicant for a funeral director's license is entitled to an examination if he: (1) Is a citizen of the United States; ..." In addition, the *Code of Alabama 1975*, Section 34-13-92 states, ".In order to qualify for a license as an embalmer, the applicant shall: (1) Be a citizen of the United States"

Attorney General's Opinion 95-092 discusses the state law prohibiting resident aliens from being licensed by the state Board of Podiatry. The opinion states that as long ago as 1873, the U.S. Supreme Court held that the practice of the profession of law is not dependent upon

having U.S. citizenship and that this conclusion has been specifically extended to the professions of dentistry and engineering. The opinion advised the Board of Podiatry that its refusal to issue a license on the basis of non-citizenship might result in litigation and that the board could decide to issue a license to a non-citizen based upon federal court decisions.

Current Status: Resolved. Recent sunset legislation contained in Act # 2008-91 amended several sections of the board's licensing statutes including Section 34-13-72 which now reads, "Be a citizen of the United States or legally present in this state."

14. **Finding:** Statements of Economic Interest, for the board members (past and present), the executive secretary, and the associate executive secretary, which are required by law to be filed with the State Ethics Commission, could not be located at the offices of the State Ethics Commission. The examiner requesting to review the statements was informed by staff at the State Ethics Commission that the statements could not be located.

The *Code of Alabama 1975*, Section 36-25-14 in part states, "(a) A statement of economic interests shall be completed and filed in accordance with this chapter with the commission no later than April 30 of each year covering the period of the preceding calendar year by each of the following:...

- (2) Any person appointed as a public official and any person employed as a public employee at the state, county, or municipal level of government or their instrumentalities who occupies a position whose base pay is fifty thousand dollars (\$50,000) or more annually...
- (4) Members of the Alabama Ethics Commission; appointed members of boards and commission having statewide jurisdiction...
- (5) All full-time nonmerit employees, other than those employed in maintenance, clerical, secretarial or other similar positions...
- (20) Directors and assistant directors of state agencies.
- (21) Chief financial and accounting directors...

Current Status: Resolved.

15. **Finding/Significant Item:** A conflict exists between the board's enabling statutes and the board's examination procedures. State law requires the board to prepare and grade its funeral directing examinations and to retain the examination papers for its embalmer examinations for three years. The board does neither.

The board administers a funeral service examination and an embalmer examination provided by the International Conference of Funeral Service Examining Boards (ICFSEB). The contract with ICFSEB requires the board to return all examination papers to the ICFSEB. The ICFSEB grades the examinations and sends the grades to the board. These procedures and practices, while in conformity with the procedures and practices of other professional licensing boards, is in conflict with state law.

The *Code of Alabama 1975*, Section 34-13-73 states, "The applicant for a funeral director's license shall, before the application is granted, successfully pass an examination upon, but not limited to, the following subjects: Funeral directing, the manners in which death may be determined, the laws governing the preparation and disposal of human dead bodies and the

shipment of bodies dying from infectious or contagious diseases and local health and sanitary ordinances in relation to funeral directing. Said examination ***shall be prepared and graded by the board***, which may review and adopt, in whole or in part, examination questions or forms proposed by the American Board of Funeral Service Education if it finds, in the discretion of the board, that such questions are appropriate and adequate.” Since the examination is prepared and graded by ICFESB, the statute is not being followed. In addition, the ***Code of Alabama 1975***, Section 34-13-94 (b) regarding the embalmer examination states, “The examination papers ***shall be kept on file by the Alabama Board of Funeral Service for at least three years.***” Since the board returns the examination papers to ICFESB, as required by its contract, the statute is not being followed.

Current Status: Unresolved. Neither the statutes nor the way in which the board conducts its examinations has changed. The board’s executive secretary stated that the board does not have access to the ICFESB questions without using all the contractual procedures and requirements imposed by the ICFESB.

16. **Finding:** The board did not post its membership information to the Secretary of State’s Internet website as required by law. The ***Code of Alabama 1975***, Section 36-14-17 requires that the chair of each board submit certain information to the Secretary of State by December 4, 2006. The required information includes the name of the agency; its mailing address; telephone number; email address; name of each appointee; date, term, and expiration of appointment; and the name and position of the appointing authority. The chair is also required to notify the Secretary of State of vacancies at least 45 days prior to the vacancy occurring when the vacancy is due to term expiration and within 15 days of the occurrence of a vacancy for other reasons. This information was required by law to be posted to the Secretary of State’s Internet website by January 4, 2007.

Current Status: Resolved.

17. **Significant Item: Failure of the board’s offices to embrace electronic technology limits the board’s ability to perform its work.** *The board does not maintain an Internet website.* Minutes of the board’s July 25, 2006 board meeting show a unanimous desire by the board to have a website. One establishment licensee responding to our survey responded “Suggestions: 1) Need to have a website 2) computerize the office”. At the board’s January 30, 2007 meeting, the executive secretary informed the board that the website should be available in the next few months.

The International Conference of Funeral Service Examining Boards Internet website indicates that of the fifty (50) states and the Virgin Islands, only eight (8) state funeral service boards did not have an Internet website as of March 26, 2007. Of those eight, five do not list an email address.

Funeral Boards Without Internet Presence	
No website	No email
Alabama	Alabama
Arizona	Arizona
Hawaii	Hawaii
Kentucky	

Nevada	Nevada
New York	
North Dakota	
Wyoming	Wyoming

The board pays for email addresses for the board staff, supplied and maintained by the Department of Finance Information Systems Division (ISD) but the examiner was not able to utilize e-mail to communicate with the board's office.

The board's staff does not have Internet access. Reluctance to utilize the Internet limits the office's access to the state's resources and dissemination of important information to state agencies, which are increasingly Internet based. Payroll processing, disbursement vouchering, purchase requisitioning, and equipment inventory processing (the State Auditor's Office has elected to keep the board as a manual user) are now normally done online at state agencies. At the board's offices, these functions are performed manually on paper.

Current Status: Unresolved. The board stated that it is in the process, with the assistance from ISD, of implementing a web site. The board has signed a contract (dated 8/8/08) with ISD to design a website for the board. The board uses a paper-based recording of establishment inspections. The board does not have a pamphlet containing its statutory authority and rules and regulations.

18. **Significant Item: The board is not actively monitoring unlicensed funeral homes.** Although unlicensed practice is a recurrent concern among the responses we received from board members and licensees, the board's staff stated that they do not actively monitor unlicensed activity. The examiner performed an Internet search for funeral homes in Alabama and compared the results to a list of licensees provided by the board. Twenty of the funeral homes found in the Internet search were not on the board's licensee list. Realizing that some of the establishments could have changed owners or names, the examiner contacted these establishments by telephone. Seven of the twenty establishments were not on the establishment licensee list provided by the board's executive secretary, and the board could not find any record of the establishments' being licensed.

Current Status: Unresolved. The executive secretary stated that the board monitors unlicensed funeral homes by observation through their travels of the state and when receiving complaints from licensed funeral establishments about possible unlicensed establishments. These are passive monitoring methods. The executive secretary did not mention active monitoring methods, such as a review of Yellow Pages or an Internet search such as was done by the examiner, which revealed unlicensed funeral establishments.

19. **Significant Item: The board did not obtain adequate examination facilities for its January 2007 examination.** The examiner observed the board's January 2007 examination of applicants held in the Capitol Room of the Capitol Inn hotel in Montgomery, AL. The room appeared too small for the examination. Hotel staff informed the examiner that the Capitol Room seats 40 people classroom style and has an area of 1200 square feet. During the examination, forty-four (44) applicants were seated at three long tables, shoulder to shoulder. All board members were also present, as were the executive secretary and the

assistant executive secretary. Two of the tables were placed so closely that the backs of chairs at one table touched the backs of the chairs at the other table. Board members and staff left and entered the room during the examination. The room was warm. Outside noises, such as car horns and laundry carts, filtered into the room. As applicants in the center of a table completed the exam, persons to the side of the applicant were disturbed as the applicants left the table.

Current Status: Resolved. The board examination given July 29, 2008 at the Madison Best Western, Ballroom A had 24 persons taking the funeral director or state law tests, a more manageable number than the 44 applicants tested during the previous audit. Ballroom A can accommodate a group of up to 100 persons.

20. **Significant Item: Records of inspections of funeral establishments create doubt as to the thoroughness of the inspections.** The board is required to complete an inspection of every funeral establishment at least annually. The majority of inspections are recorded as made during the months of August and September. Two persons perform all of the inspections. Our review of the board's inspection log for the period August 1, 2005 through September 1, 2005 indicated that inspections were performed as follows:

Summary Schedule of Travel Claims, Funeral Home Inspections, Estimated Mileage, Travel Time August 1, 2005 Through September 1, 2005							
Date	Individual Inspector's Travel Claim	Inspection Log	# Ins	Between n Cities (*)	Travel Time (*)	Date	Total Time * 10 min inspections
8/1/2005 (Mon)	Montgomery - Jackson	Selma – Union Town 15 Cities/towns	31	434	10.65 hr.	8/1/2005 (Mon)	15.17 hr
8/10/2005 (Wed)	Montgomery – Hamilton - Northport	Birmingham – Hackelburg 12 Cities/towns	19	301	6.98 hr.	8/10/2005 (Wed)	10.14 hr
8/11/2005 (Thu)		Winfield – Tuscaloosa 10 Cities/towns	19	311	6.80 hr.	8/11/2005 (Thu)	9.96 hr
8/15/2005 (Mon)	Montgomery – Florence Decatur	Hartselle – Florence 8 Cities/towns	15	335	7.35 hr.	8/15/2005 (Mon)	9.85 hr
8/16/2005 (Tue)		Florence – Decatur 5 Cities/towns	18	65	1.53 hr.	8/16/2005 (Tue)	4.53 hr
8/22/2005 (Mon)	Montgomery - Scottsboro	Madison – Scottsboro 7 Cities/towns	17	378.76	7.3 hr.	8/22/2005 (Mon)	10.13 hr
8/23/2005 (Tues)	Scottsboro - Gadsden	Stevenson – Centre 13 Cities/towns	17	194.63	5.4 hr.	8/23/2005 (Tues)	8.23 hr
8/24/2005 (Wed)	Gadsden - Arab	Southside – Oneonta 13 Cities/towns	27	309	5.2 hr.	8/24/2005 (Wed)	9.7 hr

8/25/2005 (Thur)	Arab - Montgomery	Nothing Listed	0	198	3.6 hr.	8/25/2005 (Thur)	n/a
8/29/2005 (Mon)	Montgomery – Pell City	Pell City – Birmingham 7 Towns/Cities	19	213.76	3.8 hr.	8/29/2005 (Mon)	6.96 hr
8/30/2005 (Tues)	Pell City - Gardendale	Alabaster – Birmingham 8 Cities/towns	15	104.22	2.3 hr.	8/30/2005 (Tues)	4.8 hr
8/31/2005 (Wed)	Gardendale - Tarrant	Midfield – Birmingham 5 Cities/Towns	16	77.96	1.9 hr.	8/31/2005 (Wed)	4.57 hr
9/1/2005 (Thur)	Tarrant - Montgom ery	Tuscaloos a – Clanton 4 Cities/tow ns	9	132.6 5	2.6 hr.	9/1/2005 (Thur)	4.1 hr

*NEW COLUMN

There does not appear to be sufficient time for the reported volume of inspections shown in the preceding table to have occurred on the days indicated, if thoroughly done. The inspection report form utilized by the inspectors contains the following items: The top of the inspection report records the following identification items:

- Date of inspection
- Time of arrival
- Establishment name and license number
- Managing funeral director name and license number
- Embalmer name and license number

The remainder of the inspection report records the following inspection items:

- Number of licensees
- Number of apprentices
- Proper display of license
- Number of complete services per year
- Pricing requirements: statements of charges given to families, method of quoting prices, and price card displayed in casket
- Display room requirements: number of caskets and appearance
- Restroom requirements: number, appearance, type of towels, lighting, adequate plumbing and fixtures, and floor type
- Preparation room requirements: number of embalming tables, appearance, proper drainage, approved instruments, adequate ventilation, adequate waste container, soiled linen container, drainage, type sewage, type floor, and embalming records
- Premise construction type and condition
- Number of transport vehicles and appearance

Current Status: Resolved - The examiner observed inspections performed by the executive secretary, which took 8-12 minutes. A sample of recorded inspection activity showed that the combined time of inspections of this length, when added to travel time (as computed from

MapQuest), resulted in a conclusion that the reported number of inspections per day could have occurred. Also, see *NEW COLUMN in above table from the prior significant item.

21. **Significant Item: The board failed to provide quarterly SMART Performance Report information required by the Department of Finance for the 2006 fiscal year.** The board provided the first quarter performance information for the 2006 fiscal year but did not provide the remaining three quarters of information to the SMART budget office. As of April 26, 2007, performance information continued not to be reported. Further information about the board's SMART Budget effort can be found in the SMART BUDGETING section of this report.

Current Status: Unresolved. The board has not provided SMART budget information for the 2007 or 2008 fiscal years.

22. **Significant Item: The survey by the Funeral Consumers Alliance found violation of federal funeral regulations in nearly all local [Montgomery] funeral establishments surveyed.** Minutes of the board's meeting of October 27, 2006 show that Dr. Carolyn Pevey, an Assistant Professor of Sociology at Auburn University Montgomery representing the Funeral Consumers Alliance, presented to the board a report of a survey the group had made of local funeral establishments. The purpose of the survey was to determine compliance by funeral establishments with the Federal Trade Commission's "Funeral Rule". The Funeral Rule consists of regulations governing pricing and availability of funeral goods and services. Dr. Pevey reported that nearly all establishments contacted had some violation of the rule, some with major infractions.

On its Internet website, the Funeral Consumers Alliance presents itself as a "federation of nonprofit consumer information societies dedicated to a consumer's right to a meaningful, dignified, affordable funeral" that has operated since 1963. The organization is national in scope and is headquartered in Burlington Vermont. It lists affiliates in all but six states (Alabama, Kansas, Mississippi, Nebraska, North Dakota, and Wyoming) and claims that an affiliate is "coming soon" in Alabama.

After Dr. Pevey's presentation, Dr. Pevey was informed by the board that the board's authority of enforcement ended at the state level and did not extend to federal laws or regulation. The board stated that it would inform the state's establishments that the surveys would be continuing and would encourage the establishments to review their policies to ensure compliance with the FTC regulations.

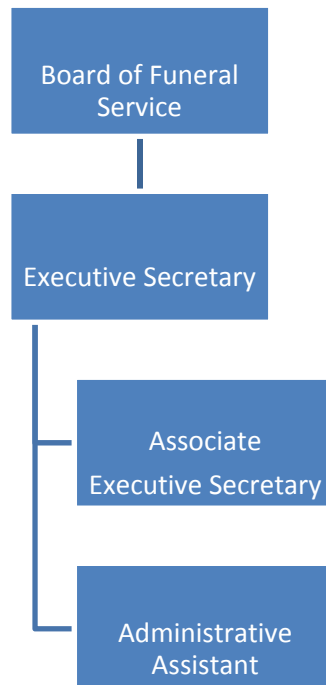
Current Status: Unresolved. The board's executive secretary stated that while the board did not adopt identical rules to the Federal Trade Commission's "Funeral Rule", they do require certain pricing requirements.

23. **Significant Item: An I-9 form was not on file for the board's recently hired employee.** Completion of a form I-9 is a federal immigration law requirement. The form documents an employer's determination that a newly-hired employee is eligible for employment under federal immigration law. This determination is required by the Federal Immigration Reform and Control Act of 1986, as amended, and is required whether or not the employer believes the employee is a United State citizen. Employees hired by all state agencies are

subject to the requirement. It is the responsibility of each employing agency to complete the form.

Current Status: Resolved.

ORGANIZATION



PERSONNEL

The board employs three (3) persons, all non-merit system. The administrative assistant is employed under terms and conditions as set by the board and is working without a contract. The board allows the employees to earn annual leave and accumulate annual leave in the same manner as merit system employees. At retirement, an employee can be paid for unused annual leave. Sick leave is also earned and accumulated in the same manner as state employees; however, accumulated sick leave is not paid upon retirement of the employee.

The *Code of Alabama 1975*, Section 34-13-23(c) provides that, “The board may employ an executive secretary and associate executive secretary who shall each receive and be paid an annual salary to be fixed by the board, but not to exceed the salary level established and paid to cabinet officers in the state government.” The *Code of Alabama 1975*, Section 34-13-23(j) provides that, “The board may employ clerical assistants and employees or other help as may be necessary to carry out the provisions of this chapter, and the terms and conditions of employment shall be determined by the board.” The *Code of Alabama 1975*, Section 34-13-23(d) provides that, “The executive secretary and associate executive secretary shall not be of the same race.” The *Code of Alabama 1975*, Section 34-13-23(g) provides that, “During and for three years after

his employment, neither the executive secretary nor any member of his family within the third degree shall be employed by any funeral establishment.”

Schedule of Employees

Classification	Number of Employees	Race	Gender
Executive Secretary	1	White	Male
Associate Executive Secretary	1	Black	Male
Administrative Assistant	1	Black	Female

PERFORMANCE CHARACTERISTICS

Number of Licensees per Employee – 1,143

Total Expenditure per Licensee (2006-2007 Fiscal Year) - \$61.51

Number of Persons per Licensee in Alabama and Surrounding States as of September 30, 2007

	Population (Estimate)*	Number of Funeral Establishments	Number of Funeral Directors	Number of Embalmers	Number of Apprentices	Persons Per Licensee
Alabama	4,627,851	470	1,709	812	438	1,350
Florida(1)	18,251,243	840	2,528	2,489	67	3,081
Georgia(2)	9,544,750	694	1,908	1,695	620	1,941
Mississippi(3)	2,918,785	653	602	590	193	1,432
Tennessee(4)	6,156,719	548	2,947(a)		581	1,510

*July 1, 2007 Census Bureau Population Estimates Report

(1) as of 3/1/08 – Florida Division of Funeral, Cemetery & Consumer Services website

(2) as of 3/13/08 – Georgia Board of Funeral Service website

(3) as of 8/13/08 – Mississippi Board of Funeral Service, Tasha Monk

(4) as of 8/13/08 – Tennessee Board of Funeral Directors & Embalmers, Sandra Cooper

(a) An individual total for these classifications was not available.

Notification to Licensees of Board Decisions to Amend Administrative Rules

The board complied with procedures as provided in the state’s Administrative Procedure Act, which includes submitting proposed rules to the Legislative Reference Service for publication in the Administrative Monthly, and public hearings on proposed rules. Licensees are not individually notified of proposed changes.

Inspections

The *Code of Alabama 1975*, Section 34-13-111 requires the board to conduct at least an annual inspection of all funeral establishments. The executive secretary and the associate executive secretary conduct all inspections.

Complaint Resolution

The board accepts only written complaints, unless in the discretion of the board representative receiving the complaint, there is sufficient information supplied by an oral complaint to warrant further investigation. The majority of complaints refer to overpayments to a funeral establishment that are not reimbursed to the family of the deceased. The board keeps a record of written complaints submitted by complainants. If a complaint indicates that a licensee has violated the law, the complaint is reviewed by board staff and legal counsel to decide if an administrative hearing is necessary. Administrative hearings are conducted in accordance with the Administrative Procedure Act. Depending on the allegations, the time of resolution for complaints varied between five days and five months.

Board Rule 395-X-4-.03 provides the procedures for documentation, receipt, and investigation of complaints relating to board licensees and illegal practices.

Initial Documentation	The board will only accept formal written complaints unless in the discretion of the board representative receiving the complaint, there is sufficient information supplied by an oral complaint to warrant further investigation.
Informal Disciplinary Procedure	If the investigative committee (legal counsel, board member, executive secretary) determines no need for further action, due to <u>No probable cause</u> or a <u>Lack of evidence</u> , the complaint is dismissed. If further action is necessary, and the complaint can best be resolved by communication, a letter of compliance requirements is sent to the offending person.
Formal Hearings	If administrative action is deemed necessary, the board and its staff shall inform the accused licensee and meet any other requirements as set forth in Title 34, Chapter 13, and Title 41, Chapter 22, Code of Alabama 1975 , relating to administrative hearings. Should a board member be involved in the investigation or in deciding the necessity of a hearing, said member shall not participate in hearing the merits of the case or the final decision process of the hearing.
Resolution/Disposition	If it is determined there is a violation of any provisions of the Board of Funeral Service, a written warning or verbal warning may be issued; or a consent order may be issued or administrative action taken including fines, suspensions and revocations of licensure.
Anonymous Complaints	The board normally does not accept anonymous complaints. No anonymous complaints were recorded as accepted during the last four years.

The number of complaints received and resolved for the past four years are:

Fiscal Year	Number of Complaints	Complaints Resolved	Average Length of Time To Resolve Closed Complaints
2003-04	3	3	No information
2004-05	6	6	4 months
2005-06	7	7	1 day
2006-07	21	11	9 days

REGULATION IN CONJUNCTION WITH OTHER ENTITIES

Federal Trade Commission (FTC) – Both the Alabama Board of Funeral Service and the FTC require pricing disclosures for funeral services and merchandise associated with chosen funeral services (package pricing). The FTC requires disclosure of not only packaged services, but also of individual items associated with those services and the availability of unbundled services and merchandise. Representatives from FTC engage in undercover shopping to discover violations of federal funeral pricing disclosure regulations. The federal regulations prohibit misrepresentations about legal, crematory, and cemetery requirements pertaining to disposition of human remains. Federal regulations also prohibit certain unfair practices, such as embalming for a fee without prior permission or requiring consumers to purchase caskets when they intend to cremate the remains or conditioning the purchase of any funeral goods and services on the purchase of any other funeral goods and services.

State Exemption from FTC Regulation

Although the federal regulations apply to all funeral establishments, there is an exemption for individual states, if the state's laws offer equal or greater protection and the state effectively enforces its laws. Federal regulations in 16 CFR 453.9 State exemptions, provides that, "If, upon application to the Commission [FTC] by an appropriate state agency, the Commission determines that: (a) There is a state requirement in effect which applies to any transaction to which this rule applies; and (b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule; then the Commission's rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the state requirement." *According to the executive director, Alabama has not applied for the exemption.*

Federal Occupational Safety and Health Administration (OSHA) – OSHA regulates funeral establishments, particularly as to safety issues surrounding the presence of blood borne pathogens and formaldehyde.

Alabama Department of Insurance – The Department of Insurance regulates the pre-need sales of funeral and cemetery services by licensing pre-need entities as required by Alabama's "Pre-Need Funeral and Cemetery Act of 2002." The Department of Insurance assumes operations (receivership) of insolvent funeral establishments and cemeteries when necessary. Receivership means that all of the assets of an entity are placed under the stewardship of the Department of Insurance chief receiver, whose official actions are supervised by the court. According to the Pre-need Division of the Department of Insurance, the Board of Funeral Service provides helpful information concerning pre-need activity.

FINANCIAL INFORMATION

Schedule of Fees

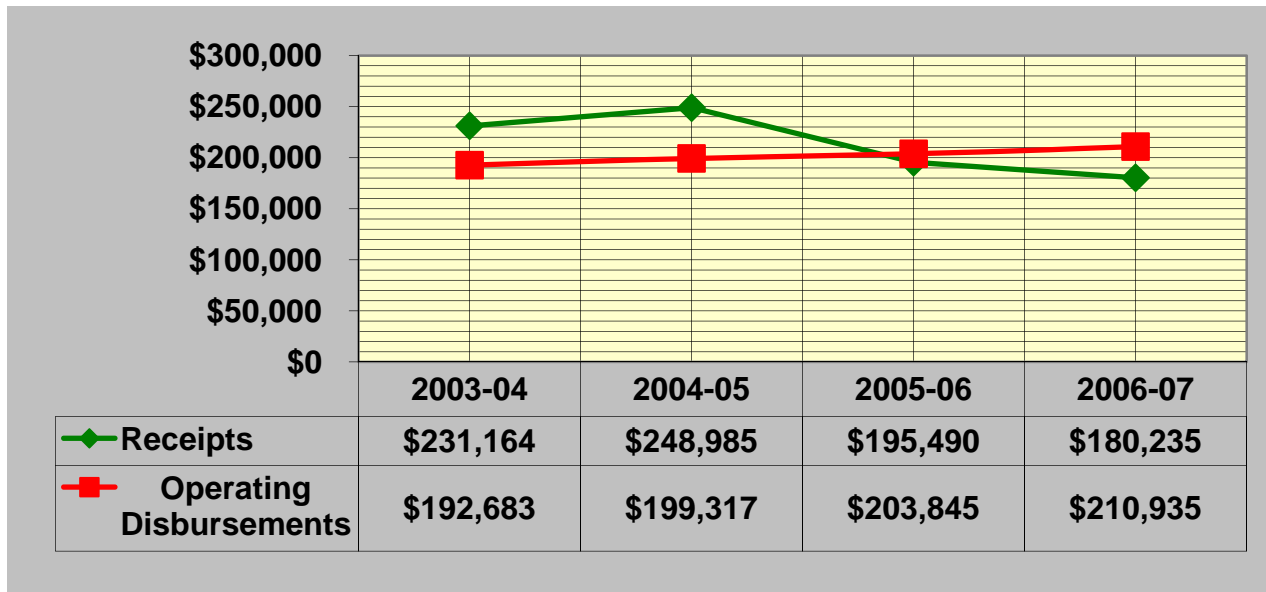
<i>Fee</i>	<i>Statutory Authority</i>	<i>Amount</i>
Funeral Director Application Fee	S 34-13-70	\$50.00
Embalmer Application Fee	S 34-13-90	\$50.00
Funeral Director Apprentice Application Fee	S 34-13-130	\$20.00
Embalmer Apprentice Application Fee	S 34-13-130	\$20.00
Funeral Establishment Application Fee	S 34-13-113	\$200.00
Funeral Director Renewal Fee	S 34-13-53	\$50.00
Embalmer Renewal Fee	S 34-13-53	\$50.00
Funeral Director Apprentice Renewal Fee	S 34-13-131	\$20.00
Embalmer Apprentice Renewal Fee	S 34-13-131	\$20.00
Practical Embalmer Renewal Fee	S 34-13-53	\$50.00
Establishment Operator Renewal Fee	S 34-13-53	\$100.00
Funeral Establishment – Original Inspection Fee	S 34-13-111(b)	\$35.00
Funeral Establishment – Reinspection Fee	S 34-13-111(b)	\$75.00
Funeral Establishment – Annual Fee	S 34-13-111(b)	\$35.00
Funeral Establishment – License Transfer	S 34-13-111(c)	\$25.00
Funeral Establishment – New Branch or Location	S 34-13-111(c)	\$250.00
Funeral Establishment – Reissued License Due to Name Change	S 34-13-114	\$25.00
Special Operating Permit	S34-13-74(b)	\$25.00
Lapsed License Penalty	S 34-13-55	\$25.00
Reciprocity License	S 34-13-51	\$100.00
Embalmer Examination	S 34-13-90(c)	Cost + \$25
Funeral Director Examination	S 34-13-70(c)	Cost + \$25

Schedule of Cash Receipts, Disbursements, and Balances

For the Period October 1, 2003 through September 30, 2007

	2006-2007	2005-2006	2004-2005	2003-2004
	<u>2006-2007</u>	<u>2005-2006</u>	<u>2004-2005</u>	<u>2003-2004</u>
<u>Receipts</u>				
License Fees	\$ 180,235.00	\$ 195,490.00	\$ 248,985.00	\$ 231,164.21
<u>Disbursements</u>				
Personnel Costs	130,226.96	124,585.13	117,588.98	118,238.98
Employee Benefits	45,578.36	41,004.19	38,574.53	33,098.84
Travel In-State	5,990.08	4,693.34	6,124.61	5,107.58
Travel Out-of State	-	-	-	-
Repairs and Maintenance	-	247.50	112.50	112.50
Rentals and Leases	10,615.06	12,070.54	14,597.16	12,437.75
Utilities and Communications	4,462.75	5,912.50	5,596.33	4,804.58
Professional Services	9,273.43	11,257.77	11,936.11	10,439.99
Supplies, Materials, and Operating Expenses	4,788.07	4,073.62	4,786.41	4,814.23
Other Equipment Purchases	-	-	-	3,628.34
Total Disbursements	210,934.71	203,844.59	199,316.63	192,682.79
Excess (Deficiency) of Receipts over Disbursements	(30,699.71)	(8,354.59)	49,668.37	38,481.42
Cash Balances at Beginning of Year	200,306.39	208,660.98	158,992.61	120,511.19
Cash Balances at End of Year	169,606.68	200,306.39	208,660.98	158,992.61
Reserved for Unpaid Obligations	(17,070.00)	(7,440.00)	(2,860.00)	(7,380.00)
Unreserved Cash Balances at end of Year	\$ 152,536.68	\$ 192,866.39	\$ 205,800.98	\$ 151,612.61

Operating Receipts Vs. Operating Disbursements (Chart)



APPENDICES

Statutory Authority

CHAPTER 13. FUNERAL SERVICES.

REFERENCES

CROSS REFERENCES

For provisions regulating the sale of cemeteries and burial services, see §§ 8-30-1 et seq.
As to use of approved identification system for dead human bodies, see § 22-19-5.

ARTICLE 1. GENERAL PROVISIONS.

§ 34-13-1. Definitions. *Current through End of 2007 Regular Session.*

(a) For purposes of this chapter, the following terms shall have the following meanings:

(1) Accredited school or college of mortuary science. A school or college approved by the Alabama Board of Funeral Service and which maintains a course of instruction of not less than 48 calendar weeks or four academic quarters or college terms and which gives a course of instruction in the fundamental subjects as set forth, but not limited to, the following:

- a. Mortuary management and administration.
- b. Legal medicine and toxicology as it pertains to funeral directing.
- c. Public health, hygiene, and sanitary science.
- d. Mortuary science, to include embalming technique, in all its aspects; chemistry of embalming, color harmony; discoloration, its causes, effects, and treatment; treatment of special cases; restorative art; funeral management; and professional ethics.
- e. Anatomy and physiology.
- f. Chemistry, organic and inorganic.
- g. Pathology.
- h. Bacteriology.
- i. Sanitation and hygiene.
- j. Public health regulations.
- k. Other courses of instruction in fundamental subjects as may be prescribed by the Alabama Board of Funeral Service.

(2) American Board of Funeral Service Education. That funeral service educational organization which is an agency granted official recognition by the United States Secretary of Education and which is composed of members representing the American Association of College of Mortuary Science, the Conference of Funeral Service Examining Board of the United States, Inc., the National Association of Colleges of Mortuary Science, and the University Mortuary Science Education Association and which has as its object the furtherance of education in the field of funeral service and in fields necessary to, or allied with, the field of funeral service, and further to formulate standards of funeral service education and to grant accreditation to qualified schools and colleges of mortuary science and to do all things incidental to the foregoing.

(3) Apprentice embalmer or embalmer's apprentice. Any person engaged in the study of the art of embalming under the instructions and supervision of a licensed embalmer practicing in this state.

(4) Apprentice funeral director or funeral director's apprentice. Any person operating under or in association with a funeral director for the purpose of learning the business or profession of funeral director, to

the end that he or she may become licensed under the provisions of this chapter.

(5) Authorizing agent. A person at least 18 years of age, except in the case of a surviving spouse or parent, who is legally entitled to order the cremation or final disposition of particular human remains.

(6) Board. The Alabama Board of Funeral Service.

(7) Cemetery. A place dedicated to and used or intended to be used for the permanent interment of human remains. It may be either land or earth interment; a mausoleum for vault or crypt entombment; a structure or place used or intended to be used for the interment of cremated remains; cryogenic storage; or any combination of one or more thereof.

(8) Cemetery authority. Any individual, person, firm, profit or nonprofit corporation, trustee, partnership, society, religious society, church, association or denomination, municipality, or other group or entity, however organized, insofar as they or any of them may now or hereafter establish, own, operate, lease, control, or manage one or more cemeteries, burial parks, mausoleums, columbariums, or any combination or variation thereof, or hold lands or structures for burial grounds or burial purposes in this state and engage in the operation of a cemetery, including any one or more of the following: The care and maintenance of a cemetery; the interment, entombment, and memorialization of the human dead in a cemetery; the sale, installation, care, maintenance, or any combination thereof, with respect of monuments, markers, foundations, memorials, burial vaults, urns, crypts, mausoleums, columbariums, flower vases, floral arrangements, and other cemetery accessories, for installation or use within a cemetery; and the supervision and conduct of funeral and burial services within the bounds of the cemetery. It is the legislative intent of this chapter that a cemetery authority, to the extent that it engages in any of the activities described in this subdivision, shall not be affected by this chapter and shall not be deemed to have entered into or engaged in the practice of funeral directing, embalming, or funeral establishment operation.

(9) Cremation. The technical process, using heat and flame, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation. Cremation shall include the processing, and may include the pulverization, of the bone fragments.

(10) Cremationist. A person who performs the procedure of cremation.

(11) Crematory. A building or portion of a building that houses a retort and that may house a holding facility for purposes of cremation and as part of a funeral establishment.

(12) Embalmer. Any person engaged or holding himself or herself out as engaged in the business, practice, science, or profession of embalming, whether on his or her own behalf or in the employ of a registered and licensed funeral director.

(13) Embalming. The practice, science, or profession, as commonly practiced, of preserving, disinfecting, and preparing by application of chemicals or other effectual methods, human dead for burial, cremation, or transportation.

(14) Funeral directing. The practice of directing or supervising funerals, the practice of preparing dead human bodies for burial by means other than embalming, or the preparation for the disposition of dead human bodies; the making of arrangements or providing for funeral services or the making of financial arrangements for the rendering of these services or the sale of this merchandise or supplies; the provision or maintenance of a place for the preparation for disposition of dead human bodies; or the use of the words or term "funeral director," "undertaker," "mortician," "funeral parlor," or any other word or term from which can be implied the practice of funeral directing; or the holding out to the public that one is a funeral director or engaged in a practice described in this subdivision.

(15) Funeral director. A person required to be licensed to practice the profession of funeral directing under the laws of this state, who meets the public, who plans details of funeral services with members of the family and minister or any other person responsible for such planning, or who directs, is in charge, or apparent charge of, and supervises funeral service in a funeral home, church, or other place; who enters into the making, negotiation, or completion of financial arrangements for funerals, including, but not limited to, the sale and selection of funeral supplies, or who uses in connection with the profession of funeral directing the words or terms "funeral director," "undertaker," "funeral counselor," "mortician," or any other word, term, or picture or combination thereof when considered in context in which used, from which can be implied the practicing of the profession of funeral directing or that the person using such word, term, or picture can be implied to be holding himself or herself out to the public as being engaged in the profession of funeral directing; and for all purposes under Alabama law, a funeral director is considered a professional; provided, for the purposes of this chapter, the term or terms shall not include any cemetery authority as defined in this section.

(16) Funeral establishments. The term "funeral home," "mortuary," or "funeral establishment" shall be construed to be a place at a specific street address or location where the profession of funeral directing,

embalming, or cremation, as defined in this chapter, is practiced in the care, planning, and preparation for burial or cremation or transportation of human dead, but shall not include any cemetery or land or structure owned, operated, leased, controlled, or managed by any cemetery authority as a cemetery. All of such places shall consist of and shall maintain the following facilities:

- a. A preparation room equipped with a sanitary floor and necessary drainage and ventilation and containing necessary approved tables, instruments, and supplies for the preparation and embalming of dead human bodies for burial, cremation, and transportation.
- b. A display room containing a stock of adult caskets and funeral supplies.
- c. At least one motor vehicle equipped for transporting human remains in a casket or urn.
- d. If engaged in the practice of cremation, at least one operable retort for cremation and an adequate supply of urns for display and sale.

(17) Funeral supplies or funeral merchandise. Caskets made of any material for use in the burial or transportation of human dead; outer receptacles, when sold by a funeral director, including burial vaults and urns, for cremated human remains; clothing used to dress human dead when sold by a funeral director; and all equipment and accouterments normally required for the preparation for burial or funeral and other disposition of human dead.

(18) Mortuary science. The scientific, professional, and practical aspects, with due consideration given to accepted practices, covering the care, preparation for burial, or transportation of dead human bodies, which shall include the preservation and sanitation of the bodies and restorative art and those aspects related to public health, jurisprudence, and good business administration.

(19) Operator. A person, corporation, firm, legal representative, or other organization owning or operating a funeral establishment.

(20) Practical embalmers. Any person who has been actively and continuously engaged or employed in the practice of embalming under the supervision of a licensed embalmer for four consecutive years immediately preceding May 1, 1975, and has been issued a license as a practical embalmer under the grandfather provisions of this chapter.

(21) Processing or pulverization. The reduction of identifiable bone fragments after the completion of the cremation process to unidentifiable bone fragments or granulated particles by manual or mechanical means.

(22) Retort. An enclosed space within which the cremation process takes place.

(23) Temporary container. A receptacle for cremated remains, usually composed of cardboard, plastic, or similar material, that can be closed in a manner that prevents the leakage or spillage of the cremated remains or the entrance of foreign material, and is a single container of sufficient size to hold the cremated remains until an urn is acquired or the cremated remains are scattered or buried.

(24) Urn. A receptacle designed to encase cremated remains.

(b) Nothing in this chapter shall require a funeral director or funeral establishment to have or provide a chapel or to restrict, in any manner, the conduct of funeral services from a church or chapel.

(c) Nothing contained in the definition of funeral directing, or in any other provision of this chapter, shall be deemed or construed to be applicable to, or to regulate or restrict, in any manner, cemetery authorities in the conduct of activities of a cemetery authority as defined in this chapter; or to be applicable to, or to regulate or restrict, in any manner, the carrying on by any cemetery authority of any and all activities, functions, practices, and services which may now or hereafter (i) constitute any part of the operation or management of a cemetery or of the property of a cemetery as defined in this chapter or (ii) otherwise consist of the interment or entombment of the human dead or memorialization of the human dead in any manner within a cemetery property.

(Acts 1975, No. 214, p. 705, § 2; Acts 1983, No. 83-746, p. 1235, § 1; Act 2002-239, p. 498, § 1.)

§ 34-13-2. Purpose of chapter. *Current through End of 2007 Regular Session.*

It is declared and established that the procedures for making final disposition of human dead, including embalming and funeral directing, are so affected with the public interest as to require regulation and control of such included occupations and that, additionally, such regulation and control are necessary for the prevention of the spread of infectious and contagious diseases, for the protection of the health and welfare of the people of the state and that all of the provisions of this chapter and regulations authorized to be made are necessary to effectuate its purpose; and all of the provisions of this chapter shall be construed liberally and in a manner to carry out its obvious intents and purposes.

(Acts 1975, No. 214, p. 705, § 1.)

§ 34-13-3. Applicability of chapter. *Current through End of 2007 Regular Session.*

This chapter does not apply to any cemetery or cemetery authority or to any public institution, medical college, county medical society, anatomical association, college of embalming, or any officer thereof, or to any other recognized person carrying out the provision of the statutes of the State of Alabama prescribing the conditions under which indigent human dead bodies are held subject for scientific or anatomical study; provided, that nothing in this section shall be construed to give any cemetery or cemetery authority or any other person or entity the right to enter into or engage in any funeral home operation or the practice of embalming or funeral directing or any related funeral home or funeral directing activities. Nor shall this chapter include any temporary or occasional or extra help to assist in the conduct of a funeral employed on such basis by a funeral director, provided such funeral is under the general supervision of a licensed funeral director.

(Acts 1975, No. 214, p. 705, § 11.)

§ 34-13-4. Publication of statutes and regulations. *Current through End of 2007 Regular Session.*

Upon request, the board shall distribute to funeral directors, embalmers and apprentices and such other persons as may be interested therein, in pamphlet form, the provisions of this chapter together with all rules and regulations prescribed, adopted or promulgated pursuant to this chapter, together with a complete and current list of all persons and establishments licensed under this chapter.

(Acts 1975, No. 214, p. 705, § 35; Acts 1981, No. 81-200, p. 234, § 4; Acts 1983, No. 83-746, p. 1235, § 1.)

§ 34-13-5. Courts having jurisdiction; initiation of proceedings. *Current through End of 2007 Regular Session.*

Circuit courts shall have jurisdiction in all prosecutions arising under this chapter. The district attorney is authorized to institute prosecutions for violations of this chapter by information, or prosecutions may be instituted by indictment or by complaint verified before any magistrate.

(Acts 1975, No. 214, p. 705, § 38.)

§ 34-13-6. Recourse by a licensee against unreasonable orders or wrongful interpretations by the board.

Current through End of 2007 Regular Session.

In the event a licensee under this chapter should have cause to believe that the board, or a member or members thereof, has used the powers of the board to promulgate orders or rulings or requirements not intended by this chapter and that such orders or rulings or requirements are used to subject said licensee to unreasonable and wrongful interpretations of this chapter by the board or that the board or a member or members thereof have imposed the powers of the board or the wrongful interpretations of this chapter upon the licensee to such extent that it constitutes harassment of the licensee, then the licensee may take an appeal for relief to the circuit court of the county in which the licensee practices embalming, funeral directing or operates a funeral establishment as prescribed in Section 34-13-31.

(Acts 1975, No. 214, p. 705, § 47.)

§ 34-13-7. Embezzlement, abstracting or willfully misapplying moneys collected; bribery. *Current through End of 2007 Regular Session.*

Each and every person who embezzles, abstracts or willfully misapplies any of the moneys, funds, security or credit of the Alabama Board of Funeral Service or who misuses any of the funds or fees so collected, by virtue of this chapter, and any person who, with like intent, aids or abets any person in violation of this chapter, or any portion thereof, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine of not less than \$500.00 nor exceeding \$5,000.00 and imprisonment in the penitentiary for a period of not less than one year and not more than five years, and the principal offenders and those aiding and abetting same may be charged in the same count, and separate offenses may be charged, in separate counts, in the same indictment and tried together. Any person found guilty of offering or of accepting a bribe whereupon any person is illegally licensed to practice embalming, funeral directing or to operate a funeral establishment in this state shall be punished by a fine of not less than \$500.00 and may be imprisoned in the penitentiary for a period of one to three years, and the principal offenders and those aiding and abetting same may be charged in the same count and separate offenses may be charged in separate counts in the same indictment and tried together.

(Acts 1975, No. 214, p. 705, § 48.)

§ 34-13-8. Certified copy of official documents. *Current through End of 2007 Regular Session.*

On application of any person and payment of the cost thereof, the executive secretary of the board shall furnish, under the seal of the board and signed by the executive secretary, a certified copy of any license, rule, regulation or order. In any court or proceeding such copy shall be prima facie evidence of the fact of the issuance of such license, regulation, rule or order and that such is effective as of the date of such certificate.

(Acts 1975, No. 214, p. 705, § 51.)

§ 34-13-9. Pricing requirements and methods of quoting prices. *Current through End of 2007 Regular Session.*

Each funeral home shall have a card or brochure in each casket stating the price of the funeral service using said casket and listing the services and other merchandise included in the price. Where there are separate prices for the casket, the professional services, the use of facilities and the use of equipment, such card shall indicate the price of each such item, except in those instances such as unknown transportation costs and similar items, which services must be stated with the price to be fixed upon billing. When the arrangers decide on the type of service desired, the firm must provide or cause to be provided to the person or persons making the arrangements, at the time such arrangements are completed and prior to the time of rendering the service or providing the merchandise, a written statement showing (1) the price of the service that the person or persons have selected and what is included therein; (2) the price of each of the supplemental items of service and merchandise requested; (3) the amount involved for each of the items for which the funeral service home will advance money as an accommodation to the family; and (4) the method of payment. No additional charges shall be made without approval of the arrangers except as stated in this section.

(Acts 1975, No. 214, p. 705, § 52.)

§ 34-13-10. Violations. *Current through End of 2007 Regular Session.*

Unless otherwise provided herein, violation of any part of this chapter shall be a misdemeanor and shall be punishable as such under the laws of Alabama. It is further provided that those actions specifically enumerated in subdivisions (2)a. through (2)f., (2)h., (2)j., (2)m. and (2)n. of Section 34-13-56 shall be punishable as a misdemeanor and may be prosecuted accordingly.

(Acts 1975, No. 214, p. 705, § 53; Acts 1981, No. 81-200, p. 234, § 4.)

§ 34-13-11. Authorizing agent. *Current through End of 2007 Regular Session.*

The following persons, in the priority listed herein, may serve as an authorizing agent:

(1) The decedent's spouse at the time of the decedent's death.

(2) The decedent's surviving children. If there is more than one child who qualifies as an authorizing agent, any such child may serve as the authorizing agent except, in the case of a cremation, such child must submit by

affidavit the consent of all other surviving children to serve as authorizing agent. If any surviving child is unable to be notified of a pending cremation, the remaining children may select the authorizing agent by submission of legal documentation of the inability to notify the absent child or children. If the funeral director receives written objection to such cremation from any child before cremation, no cremation shall be performed except upon the written withdrawal of the objection or upon the order of a court of competent jurisdiction.

(3) The decedent's surviving parents. If the decedent is survived by two parents, either parent may serve as the authorizing agent except, in the case of a cremation, such parent must submit by affidavit the consent of the other surviving parent to serve as authorizing agent. If the other surviving parent is unable to be notified of a pending cremation, a parent may serve as the authorizing agent by submission of legal documentation of the inability to notify the absent parent. If the funeral director receives written objection to such cremation from either parent before cremation, no cremation shall be performed except upon the written withdrawal of the objection or upon the order of a court of competent jurisdiction.

(4) The decedent's surviving siblings. If there is more than one sibling who qualifies as an authorizing agent, any sibling may serve as the authorizing agent except, in the case of a cremation, such sibling must submit by affidavit the consent of all other surviving siblings to serve as authorizing agent. If any surviving sibling is unable to be notified of a pending cremation, the remaining siblings may select the authorizing agent by submission of legal documentation of the inability to notify the absent sibling or siblings. If the funeral director receives written objection to such cremation from any sibling before cremation, no cremation shall be performed except upon the written withdrawal of the objection or upon the order of a court of competent jurisdiction.

(5) Any person acting on the decedent's signed written instructions regarding final disposition contained in a preneed funeral contract and, in the case of cremation, a cremation authorization form signed by the decedent.

(6) Any person serving as executor or legal representative of a decedent's estate and acting on the decedent's signed, written instructions contained in a will or other writing, regardless of whether the will has been probated.

(7) The person in the next degree of kinship under the laws of descent and distribution to inherit the decedent's estate. If there is more than one person of the same degree, any such person may serve as the authorizing agent.

(8) In the case of indigents or any other individuals whose final disposition is the responsibility of the state or any of its subdivisions or agencies, a public administrator, medical examiner, coroner, or any other public official charged with arranging the final disposition shall serve as the authorizing agent in the absence or refusal of any person described in subdivisions (1) to (7), inclusive.

(9) In the absence or refusal of any person described in subdivisions (1) to (7), inclusive, any person willing to assume the responsibility as authorizing agent.

(Act 2002-239, p. 498, § 3.)

§ 34-13-12. Liability of funeral director or establishment. *Current through End of 2007 Regular Session.*

(a) A funeral director or funeral establishment that has received expressed written authorization for final disposition or cremation from the authorizing agent shall not be liable for the final disposition or cremation of the human remains designated by the authorization if the disposition or cremation is performed in accordance with this chapter, nor shall a funeral director or funeral establishment be liable for following, in a reasonable fashion, the instructions of any person who falsely represents being the proper authorizing agent.

(b) Absent the receipt of a court order or other suitable confirmation of resolution, a funeral director or funeral establishment may not be liable for refusing to accept human remains for final disposition or for refusing to perform a cremation, if the funeral director or other agent of the funeral establishment: (1) Is aware of any dispute concerning the final disposition or cremation of the human remains; or (2) has a reasonable basis for questioning any of the representations made by the authorizing agent. A funeral director or other agent of the funeral establishment may not be liable for refusing to accept human remains for any lawful reason.

(Act 2002-239, p. 498, § 3.)

ARTICLE 2. BOARD OF FUNERAL SERVICE.

§ 34-13-20. Creation; composition; qualifications of members; appointment; terms of office; abolition of

Board of Embalming. *Current through End of 2007 Regular Session.*

There is hereby created and established the Alabama Board of Funeral Service, consisting of seven members, each of whom shall be citizens of the United States and of the State of Alabama. All members of the former Alabama Embalming Board who are holding office on September 10, 1975, shall, by virtue of said office, become members of the Alabama Board of Funeral Service for the term ending December 31, 1976; provided, that not more than one member of the Alabama Board of Funeral Service may reside in the same district as herein created under Section 34-13-21, and if more than one member of the State Embalming Board resides in one district at the time of the organization of said board, the Governor shall select one member of said Embalming Board to be a member of the original Alabama Board of Funeral Service from said district, and the other member of said Embalming Board shall not be eligible for membership on said board.

At a special meeting called for such purpose, to be held in Montgomery, Alabama within 45 days from September 10, 1975, the Alabama Funeral Directors Association, Incorporated and the Alabama Funeral Directors and Morticians Association, Incorporated, in joint meeting, shall nominate three qualified persons for each of the positions as members of the original board of the Alabama Board of Funeral Service which are not filled by members of the State Embalming Board. The names of such persons so nominated shall be promptly certified by the secretary of the Alabama Funeral Directors Association, Incorporated, and the Alabama Funeral Directors and Morticians Association, Incorporated, to the Governor of the State of Alabama who shall appoint the members of said board from among the persons so nominated; provided, that not more than four members of said board at any time may be members of the same race. Four members shall be appointed for a term ending December 31, 1977, and the board shall be constituted so that the terms of three members of said board will end December 31, 1976, and the terms of four members will end December 31, 1977. The terms of the members of the State Embalming Board, who become members of the Alabama Board of Funeral Service under this chapter, shall expire December 31, 1976, unless there are more than three such members, in which event, the Governor shall designate which of the three members of the State Embalming Board shall serve for terms ending December 31, 1976, and which shall serve for terms ending December 31, 1977.

After selection of the original members of the Alabama Board of Funeral Service and during October of each year, all embalmers and all funeral directors licensed under this chapter shall meet in Montgomery, Alabama at a time and date in October and at a place to be fixed by the Alabama Board of Funeral Service for the purpose of nominating three persons to the Governor of Alabama for each vacancy on said board, and the Governor shall promptly appoint one of the three persons so nominated.

The successors to the original members of the Alabama Board of Funeral Service shall be selected for terms of two years. After the terms of the original members of the Alabama Board of Funeral Service, four of said members serving on said board must be practicing and licensed embalmers in Alabama for the last 10 consecutive years immediately preceding their appointment and shall be licensed embalmers and funeral directors in this state under this chapter. Three of said members shall have been actively engaged in funeral directing in Alabama for the last 10 consecutive years preceding their appointment and shall be licensed funeral directors of this state, under this chapter, and shall, at the time of their appointment to the board, be operators of funeral establishments in this state. If the license of a member of said board as a funeral director or embalmer should be revoked or suspended, such member shall automatically, by reason of such revocation or suspension, become ineligible to serve as a member of the board, and a new member, properly qualified, must be selected in the same manner provided for appointment to the board. Should a member fail to qualify after appointment, then he shall automatically become ineligible to serve as a member of the board, and a new member, properly qualified, shall be appointed and shall serve the remainder of the term of the member so terminated. Each member of the board must remain an active practicing funeral director or embalmer and funeral establishment operator during his tenure of service on the board. Each member may be reappointed for one additional two-year term, as provided by this chapter, or new members may be appointed under the terms of this chapter. It is the intent of this chapter that no person shall serve more than a total of four years as a member of the board. In no event shall more than one member of the Alabama Board of Funeral Service reside in one district. At each meeting where nominations are made for members of the board, only one licensed funeral director of each establishment shall have the right to vote for nominees.

Any state board member who is elected to the national board shall, upon his election, begin to serve the state board in an ex officio capacity only, for the duration of his national board term. A member, properly qualified, shall be selected in the same manner provided for appointment to the state board and shall serve the remainder of the term of the member elected to the national board.

(Acts 1975, No. 214, p. 705, § 3; Acts 1983, No. 83-746, p. 1235, § 1.)

§ 34-13-21. Membership districts. *Current through End of 2007 Regular Session.*

There are hereby created, for the purpose of this chapter, seven geographical districts which shall be identical with the seven congressional districts as fixed and established by Section 17-20-1, as may be amended. It is the purpose and intention of this section to provide that one member of the Alabama Board of Funeral Service shall be selected from each district, which shall be geographically identical with the congressional districts, and that three nominees to the Governor for appointment to said board shall be made from each said district. (Acts 1975, No. 214, p. 705, § 4.)

§ 34-13-22. Meetings; quorum. *Current through End of 2007 Regular Session.*

The Alabama Board of Funeral Service shall hold not less than one meeting quarterly for the purpose of examining applicants for licenses, such meeting to be held at such time and place as the board may determine after notice of such meeting has been given in the manner prescribed herein at least 15 days prior to such meeting. The board shall not have power to delegate to any person who is not a member of the board the authority to conduct or administer an examination for a license, it being the intent of this chapter that only members of the board may conduct or administer examinations for licenses. The board may hold such other meetings as it may deem necessary. Five or more members shall comprise a quorum. The board shall not meet on the premises of any embalming school or college of mortuary science; and, if any such meeting is held, all the proceedings of such meeting shall be void. If any application for license under this chapter are pending, the applicant or applicants shall be afforded the right to take the examination required hereunder at the date and place of such quarterly meeting. (Acts 1975, No. 214, p. 705, § 5; Acts 1983, No. 83-746, p. 1235, § 1.)

§ 34-13-23. Officers; procedural rules and regulations; compensation of members; executive secretary; disposition of fees and fines. *Current through End of 2007 Regular Session.*

(a) The board appointed under the provisions of this chapter and each successor thereto is authorized to select from its own membership a chairman and to adopt and promulgate such rules and regulations for the transaction of its business and for the betterment and promotion of the standards of service and practice to be followed in the funeral service profession in the State of Alabama as it may deem expedient and consistent with the laws of this state and for the public good.

The chairman of the board shall preside at all meetings of the board unless otherwise ordered, and he shall exercise and perform all duties and functions incident to the office of chairman of the board.

The board may select also from its own membership a vice-chairman, a secretary and a treasurer. No two offices shall be held by the same person. The chairman and vice-chairman shall not be of the same race.

(b) The treasurer shall give bond to the State of Alabama in the sum of \$10,000, and any premium payable for the bond shall be paid from the funds of the board. The bond shall be deposited with the Treasurer of the State of Alabama.

(c) Board members shall be reimbursed for their necessary traveling expenses and the necessary expenses incident to their attendance upon the business of the board, and, in addition thereto, they shall receive the sum of \$50 per diem for every day not to exceed 10 days per year actually spent by the member upon the business of the board. The board may employ an executive secretary and associate executive secretary who shall each receive and be paid an annual salary to be fixed by the board, but not to exceed the salary level established and paid to cabinet officers in the state government. The salary shall be paid on a monthly basis. In addition, the executive secretary and associate executive secretary shall receive his or her necessary traveling and other incidental expenses as are incurred in the performance of duties, and all expenses, per diem and compensation shall be paid out of the receipts of the board. At no time shall the operation of the board be an expense to the state, and at no time shall expenses of the board exceed the receipts hereof.

(d) The executive secretary of the board shall have complete supervision and be held responsible for the direction of the office of the board and shall have supervision over field inspection and enforcement of the provisions of this chapter and shall be responsible and answerable to the board. The associate executive secretary shall assist the executive secretary and perform such other duties as may be assigned to him or her by the board. The executive secretary and associate executive secretary shall not be of the same race.

(e) The executive secretary of the board shall keep a record in which shall be registered the name and business address of every person to whom licenses have been granted in accordance with this chapter, the number and date of the license and the date of each renewal. Upon request to do so, the executive secretary of the board shall supply

each person licensed for the practice of embalming and funeral directing with a list of all persons and establishments holding a license under this chapter, then in force, giving the names of the persons, their business addresses and the numbers of their licenses.

(f) It shall be the duty of the executive secretary of the board to prepare under the direction of the board and cause to be printed all forms required by this chapter to be prescribed by the board. All notices required to be mailed by any provision of this chapter shall be directed to the last known post office address of the party to whom the notice is sent.

(g) The executive secretary shall serve at the pleasure of the board and shall perform duties as may be necessary for the proper functioning of the board as the board may determine or as may be prescribed in this chapter. During and for three years after his employment, neither the executive secretary nor any member of his family within the third degree shall be employed by any funeral establishment.

(h) All fees and fines received under the provisions of this chapter shall be paid into a special fund in the State Treasury to be known as the Alabama State Funeral Directors and Embalmers Fund, which is hereby created, for the necessary and proper expenses of the board, and for a reasonable reserve for future use by the board. All moneys in the fund are hereby appropriated, as a continuing appropriation, to the Alabama Board of Funeral Service to be used for carrying out any of the provisions of this chapter.

(i) Each member of the board, the executive secretary, the associate executive secretary and designated employees of the board appropriately identified are authorized on complaint or for inspection purposes to enter the office, premise, establishment or place of business of any funeral service licensee in the State of Alabama or any office, premises, establishment or place where the practice of funeral service is carried on, or where the practice is advertised as being carried on, for the purpose of inspecting the office, premises or establishment and for the purpose of inspecting the license and registration of any funeral service licensee and apprentice trainee operating therein.

All members of the board or designated employees of the board are hereby authorized to serve and execute any process issued by any court under the provisions of this chapter and to serve and execute any papers or process issued by the board or any officer or member thereof under authority of this chapter.

(j) The board may employ clerical assistants and employees or other help as may be necessary to carry out the provisions of this chapter, and the terms and conditions of employment shall be determined by the board. The board may establish and equip an office from which the provisions of this chapter may be carried out.

(Acts 1975, No. 214, p. 705, § 6; Acts 1981, No. 81-200, p. 234, § 4; Acts 1995, No. 95-517, p. 1047, § 1.)

§ 34-13-24. Oath of members. *Current through End of 2007 Regular Session.*

Every member of the board, after appointment and before entering upon his duties, shall make oath before some officer competent to administer oaths, that he is legally qualified to become a member of said board under the provisions of this chapter and that he will faithfully perform the duties of such office, a copy of which shall be filed in the office of the Secretary of State.

(Acts 1975, No. 214, p. 705, § 7.)

§ 34-13-25. Hearings to be public; record of proceedings. *Current through End of 2007 Regular Session.*

All hearings provided for by this chapter shall be open to the public, and a report and record of proceedings of each hearing shall be made at the expense of the board. A copy of such report and record shall be furnished to any interested party, upon request and tender to the executive secretary of the board of the reasonable cost of preparation thereof.

(Acts 1975, No. 214, p. 705, § 31.)

§ 34-13-26. Promulgation of rules and regulations; authority to hold hearings; restraining of violations.

Current through End of 2007 Regular Session.

(a) The board has the power to adopt and enforce for the protection of the public health, safety and welfare reasonable rules and regulations.

(b) The rules and regulations of the board shall not become effective until they have been published and discussed at a public hearing and have been filed in the office of the Secretary of State; and, when so filed, such rules and regulations shall be in full force and have the effect of law. The board shall mail notice of such hearing to each licensee under this chapter 15 days before the date of such hearing.

(c) All rules and regulations adopted by the board shall be referenced to the section or sections of this chapter which set forth the legislative standard which it interprets or to which it applies. Every rule and regulation shall be in writing, promulgated by an order, state its effective date, indexed in a permanent book which shall be a permanent record, and a true copy shall be filed in the office of the Secretary of State of Alabama. A copy of every order promulgating a rule, regulation or other order containing a requirement of general application shall be mailed to each licensee by first class mail. The failure of a licensee to receive a copy of the rule, regulation or order shall not exempt or excuse him from the duty of compliance with the valid rules, regulations or orders lawfully issued.

(d) The board shall have power to hold hearings, conduct investigations, subpoena witnesses, administer oaths and take testimony in order to carry out the provisions of this chapter.

(e) A court of competent jurisdiction may, upon application of the board, restrain violations or refusals to comply with the provisions of this chapter or the regulations of the board.
(Acts 1975, No. 214, p. 705, § 34.)

§ 34-13-27. Seal; scope of rules and regulations. *Current through End of 2007 Regular Session.*

The board shall adopt a common seal, which may be altered as often as said board may desire, and may adopt and enforce, for the protection of the public health, safety and welfare, reasonable rules and regulations relating to:

- (1) The practice of the profession of embalming, including, but not limited to, solicitation of business;
 - (2) The practice of the profession of funeral directing, including but not limited to, solicitation of business;
 - (3) The sanitary condition and physical facilities of funeral homes, mortuaries and funeral establishments where the profession of embalming and funeral directing is carried on, with particular regard to plumbing, sewage, disinfecting, ventilation and equipment;
 - (4) Carrying out generally the various provisions of this chapter for the protection of the peace, health, safety and welfare of the public; and
 - (5) Carrying out a program for training of apprentice embalmers and apprentice funeral directors.
- (Acts 1975, No. 214, p. 705, §§ 8, 34.)

§ 34-13-28. Annual report. *Current through End of 2007 Regular Session.*

On or before April 1 of each year, the board shall report to the Governor and to the Legislature a full statement of the receipts and disbursements of the board during the preceding year and full statement of its doings and proceedings and such recommendations as it may deem proper.

(Acts 1975, No. 214, p. 705, § 36; Acts 1981, No. 81-200, p. 234, § 4.)

§ 34-13-29. Audit and payment of expenses. *Current through End of 2007 Regular Session.*

All necessary expenses incurred in giving examinations to applicants and incidental to the renewal of licenses and all necessary expenses incurred in education and enforcing the provisions of this chapter shall be audited by the Examiner of Public Accounts and paid from the funds provided for in this chapter in the same manner as other claims against the state are paid after due approval thereof by the chairman and executive secretary of the board.

(Acts 1975, No. 214, p. 705, § 37.)

§ 34-13-30. Transfer of funds. Repealed by Acts 1981, No. 81-200, p. 234, § 5, effective April 7, 1981. *Current through End of 2007 Regular Session.*

§ 34-13-31. Appeal from decision of board. *Current through End of 2007 Regular Session.*

(a) Whenever, by decision, final order or other final determination upon any public hearing provided for by this chapter, a party to such hearing shall feel aggrieved, an appeal may be taken to the circuit court for the county within which such party resides or, if he is not a resident of Alabama, then to the circuit court for the county within which the hearing was held. However, if there is more than one appellant, the circuit court having jurisdiction to hear the appeal of the first appellant filing a notice of appeal shall have jurisdiction to hear all appeals arising from the same hearing, irrespective of the place of residence of the appellants.

(b) On taking and perfecting an appeal to the circuit court having jurisdiction thereof, the court shall proceed as in other cases.

(c) All appeals shall be taken within 30 days from the date of the action or order made the basis of the appeal and shall be granted as a matter of right and be deemed perfected by filing with the board a bond for security of costs of said appeal. Upon filing of a verified petition and hearing thereon, the court may, in its discretion, stay the order appealed from pending final judicial review. No new or additional evidence may be introduced in the circuit court except as to fraud or misconduct of some person engaged in the administration of this chapter and affecting the order, rule or ruling appealed from. The court shall otherwise hear the case upon the record as certified to the court by the executive secretary of the board and shall set aside the order, rule or action appealed from if the court finds that the board erred to the prejudice of the appellant's substantial rights in its application of the law; or, the order, decision or award was procured by fraud or was based upon a finding of facts contrary to the substantial weight of the evidence, or that the order was arbitrary, capricious or inconsistent with respect to any of the material issues involved; or that the board failed in its order to find sufficient facts as to each material issue involved to enable the court to determine the basis for the conclusion of the board. The court may, instead of setting aside the order, remand the case to the board for further proceedings in conformity with the direction of the court. The court may, in advance of judgment and upon a sufficient showing, remand the cause to the board for the purpose of taking additional testimony or other proceedings.

(d) An appeal may be taken from the judgment decree or any appealable order of the circuit court to the Supreme Court of this state. Appeals to the Supreme Court shall be taken, perfected, heard and determined in the manner prescribed by law and the Alabama Rules of Appellate Procedure for taking, perfecting, hearing and determining appeals to the Supreme Court.

(Acts 1975, No. 214, p. 705, § 32.)

ARTICLE 3. LICENSES, EXAMINATIONS AND REGISTRATION.

DIVISION 1. GENERAL PROVISIONS.

§ 34-13-50. Board recognition of schools and colleges. *Current through End of 2007 Regular Session.*

The Alabama Board of Funeral Service shall recognize and approve and accept applicants for examination from only those established embalming schools or colleges which are recognized by the board. The board shall recognize and approve any embalming school or college approved by the American Board of Funeral Service Education, and any additional embalming schools or colleges which, in the judgment of the board, offer courses of study which generally include the subjects set out in Section 34-13-94. The Alabama Board of Funeral Service shall not examine or issue an embalmer's license to any person who does not hold a certificate of graduation from an embalming school or college meeting the criteria or standards as defined in this section.

(Acts 1975, No. 214, p. 705, § 20.)

§ 34-13-51. Reciprocity of licenses. *Current through End of 2007 Regular Session.*

(a) The board may, but shall not be required to, recognize and issue, without examination, and upon payment of a fee of one hundred dollars (\$100) for each license, a reciprocal license for the practice of funeral directing or embalming to any person licensed as a funeral director or embalmer by any state, if the board makes an individual determination that the applicant's qualifications meet or exceed the minimum qualifications required for funeral directors or embalmers in this state and that a written examination of such applicant would be superfluous.

(b) Applications shall be made on forms prescribed and furnished by this board. An applicant holding a funeral director or embalmer license from another state, and applying for a funeral director or embalmer license in Alabama will be considered for licensing by reciprocity.

(c) The board shall at the time of the application make a reasonable determination that the applicant is a legal resident of the United States. The board reserves the right to require applicants for reciprocity to submit to a personal interview or a written examination relating to the law as it pertains to the regulation of the funeral service profession in Alabama.

(Acts 1975, No. 214, p. 705, § 19; Acts 1981, No. 81-200, p. 234, § 4; Acts 1981, No. 81-709, p. 1190, § 1; Act 2006-598, p. 1635, § 1.)

§ 34-13-52. Execution and display of licenses. *Current through End of 2007 Regular Session.*

(a) Licenses under this chapter shall be granted to individuals upon the qualification and successful examination of the individual applicant and shall specify the name to whom it is issued.

(b) Every license issued under this chapter shall be signed by the chairman and executive secretary of the board and shall be displayed in the place of business or employment of the licensee.

(Acts 1975, No. 214, p. 705, § 21.)

§ 34-13-53. Renewal of licenses; authorization; attestation of identity; records. *Current through End of 2007 Regular Session.*

(a) Every licensed funeral director, every licensed embalmer, and every licensed operator shall pay annually a fee for renewal of his or her license. The renewal fees shall be set by the board at a rate not to exceed fifty dollars (\$50) for licensed embalmers and funeral directors and shall not exceed one hundred dollars (\$100) for licensed operators.

(b) All licenses granted under this chapter shall expire on October 1, following their issuance or renewal, and shall become invalid unless renewed as provided in this section. There shall be no proration of licenses.

(c) The board shall mail on or before August 1 of each year to each licensed funeral director, to each licensed embalmer, and to each licensed operator addressed to him or her at his last address, a notice that his or her renewal fee is due and payable and that, if such fee is not paid by October 1, the license shall lapse.

(d) At the time, or before, a licensee changes place of employment, residence address, or makes any other change in status which is of record at the board office, the licensee shall report such change of status, on a form provided by the board, to the executive secretary.

(Acts 1975, No. 214, p. 705, § 22; Acts 1981, No. 81-200, p. 234, § 4; Acts 1981, No. 81-709, p. 1190, § 1; Acts 1983, No. 83-746, p. 1235, § 1; Act 2002-239, § 2.)

§ 34-13-54. Transferability. *Current through End of 2007 Regular Session.*

No license to an embalmer, a funeral director or a funeral establishment granted under or regulated by this chapter shall be transferable or assignable.
(Acts 1975, No. 214, p. 705, § 10.)

§ 34-13-55. Reinstatement of lapsed licenses. *Current through End of 2007 Regular Session.*

When a licensee, for any reason, has allowed his license to lapse, the board hereby is given power of reinstatement, in its discretion, if application therefor is made within a period of six months from the lapse and is accompanied by payment of all penalties and lapsed fees, from the time of the lapse to date of reinstatement. The penalties to be paid to the board shall be \$25.00 to reinstate licenses which have lapsed.

After said six-month period has elapsed, such license may be reinstated only by complying with the provisions hereinabove relating to the issuance of an original license in addition to payment of all lapsed fees and penalties.
(Acts 1975, No. 214, p. 705, § 24; Acts 1981, No. 81-200, p. 234, § 4; Acts 1981, No. 81-709, p. 1190, § 1.)

§ 34-13-56. Grounds for revocation, suspension or refusal to issue or renew licenses; fines. *Current through End of 2007 Regular Session.*

(a) The board may refuse to grant, refuse to renew, or suspend or revoke a license after proper hearing and notice to the licensee, upon the licensee's being found guilty of any of the following:

- (1) Conviction of a crime involving moral turpitude.
- (2) Unprofessional conduct, which is defined to include any of the following:
 - a. Misrepresentation or fraud in the conduct of the business or the profession of a funeral director or embalmer.
 - b. False or misleading advertising as a funeral director or embalmer or knowingly engaging in any advertising which is misleading or inaccurate in any material particular.
 - c. Solicitation of dead human bodies by the licensee, his or her agents, assistants, or employees, whether the solicitation occurs after death or while death is impending.
 - d. Employment by the licensee of a person or persons to be used for the purpose of obtaining or soliciting funeral directing or embalming business.
 - e. Employment directly or indirectly of any apprentice, agent, assistant, embalmer, employee, or other person, on part or full time or on commission, for the purpose of calling upon individuals or institutions where a death has occurred or is imminent by whose influence dead human bodies may be turned over to a particular funeral director or embalmer or funeral establishment, or both.
 - f. The buying of business by the licensee, his or her agents, assistants, or employees.
 - g. Gross immorality.
 - h. Aiding or abetting an unlicensed person to practice funeral directing or embalming.
 - i. Using profane, indecent, or obscene language in the presence of a dead human body, or within the immediate hearing of the family or relative of a deceased whose body has not yet been interred or otherwise disposed of.
 - j. Solicitation or acceptance by a licensee of any commission or bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in any mausoleum or cemetery.
 - k. Any violation of this chapter.
 - l. Any violation of state law or municipal or county ordinance or regulation affecting the handling, custody, care, or transportation of dead human bodies.
 - m. Fraud or misrepresentation in obtaining a license.
 - n. Refusing to promptly surrender the custody of a dead human body, upon the express order of the person lawfully entitled to the custody thereof.
 - o. Performing services in a professional capacity as a funeral director or embalmer, or both, for any unlicensed funeral establishment operating in violation of this chapter.
 - p. Being intoxicated or under the influence of illegal drugs while on duty at a funeral establishment.
 - q. Willfully retaining or willfully failing to account for any property of a decedent.
 - r. Knowingly and willfully signing a certificate as having embalmed or prepared a body for burial when, in fact the services were not performed by the licensee.

(b) In addition to the disciplinary actions authorized in subsection (a), the board may levy and collect

administrative fines for violations of this chapter or the rules or regulations of the board in an amount not to exceed five hundred dollars (\$500) for each violation.

(Acts 1975, No. 214, p. 705, § 25; Acts 1995, No. 95-517, p. 1047, § 2.)

§ 34-13-57. Secretary to mail notices of examination. *Current through End of 2007 Regular Session.*

The executive secretary of the board shall mail notices to all applicants and all established funeral firms in the state 15 days before an examination, listing the names of all persons admitted by the board to take the examination and setting out the time and place of the examination.

(Acts 1975, No. 214, p. 705, § 39.)

DIVISION 2. FUNERAL DIRECTORS.

§ 34-13-70. License required; filing of application; fee; time and place for examination. *Current through End of 2007 Regular Session.*

(a) No person shall engage in, or attempt to engage in, the practice or profession or business of a funeral director unless licensed to do so by the Alabama Board of Funeral Service. The board hereby is granted authority to issue license to funeral directors.

(b) Any person desiring to engage in the business, profession or practice of funeral director shall make application to the board and shall accompany his application by a fee to be established by the board, not to exceed \$100.00, whereupon the board shall fix the time and place for the examination of the applicant and shall notify the applicant thereof.

(c) In addition, the board shall establish and charge a reasonable examination fee, based on actual costs, for each applicant who sits for an examination, however, in no event shall the fee exceed \$25.00 above the actual cost of preparing and administering such exam.

(Acts 1975, No. 214, p. 705, §§ 9, 40; Acts 1981, No. 81-200, p. 234, § 4; Acts 1981, No. 81-709, p. 1190, § 1; Acts 1991, No. 91-196, p. 360, § 3.)

§ 34-13-71. Form and contents of application. *Current through End of 2007 Regular Session.*

An application for a license as a funeral director shall be in writing and verified on a form provided by and addressed to the board and filed with the secretary of the board. The application must specify the address of the applicant and must be accompanied by the affidavits of at least two licensed embalmers or funeral directors to the effect that the applicant is of good character and has qualified himself to become licensed as prescribed by this chapter.

(Acts 1975, No. 214, p. 705, § 12.)

§ 34-13-72. Qualifications of applicants for examination. *Current through End of 2007 Regular Session.*

An applicant for a funeral director's license is entitled to an examination if he:

(1) Is a citizen of the United States;

(2) Is at least 18 years of age;

(3) Has had practical experience as an apprentice for not less than two years within a period of three consecutive years, excluding time lost by interruptions caused by the active duty of the applicant in the military service of the United States or its allies during war or national emergency and excluding time lost by interruptions which the board deems excusable as caused by circumstances beyond the control of the applicant; and

(4) Has completed apprenticeship not more than two years prior to taking the examination, excluding time lost under the circumstances mentioned in subdivision (3) of this section.

(Acts 1975, No. 214, p. 705, § 13; Acts 1983, No. 83-746, p. 1235, § 1.)

§ 34-13-73. Scope of examination. *Current through End of 2007 Regular Session.*

The applicant for a funeral director's license shall, before the application is granted, successfully pass an examination upon, but not limited to, the following subjects: Funeral directing, the manners in which death may be determined, the laws governing the preparation and disposal of human dead bodies and the shipment of bodies dying from infectious or contagious diseases and local health and sanitary ordinances in relation to funeral directing. Said examination shall be prepared and graded by the board, which may review and adopt, in whole or in part, examination questions or forms proposed by the American Board of Funeral Service Education if it finds, in the discretion of the board, that such questions are appropriate and adequate.

(Acts 1975, No. 214, p. 705, § 14.)

§ 34-13-74. Application by surviving spouse upon death of funeral director; operation under special permit by operator. *Current through End of 2007 Regular Session.*

(a) When a licensed funeral director dies leaving a licensed funeral business with no licensed funeral director, the surviving spouse, or a surviving child of legal age, shall have the right to make application for examination as a funeral director. The application shall be in writing, on a form prescribed by the board, and shall state the facts pertaining to the case. The board may, in its discretion, certify the applicant for the examination prescribed for funeral directors, in which event the requirements with respect to prior experience and apprenticeship shall be waived.

(b) When a licensed funeral director dies leaving a licensed funeral business with no licensed funeral director, the board may issue a special operating permit to the operator of such licensed funeral business for a period of 12 months, with the board having the right to extend said permit an additional reasonable time to afford such operator the opportunity of obtaining a licensed funeral director for such business. The operator shall be required to pay a fee for the issuance of said special operating permit in the amount of \$25.00.

(c) All human dead embalmed for a funeral establishment operating under a special operating permit and all funeral directing operations carried on under said permit shall be in conformance with all the requirements of this chapter which are not in conflict with this section.

(Acts 1975, No. 214, p. 705, § 45.)

DIVISION 3. EMBALMERS.

§ 34-13-90. License required; fees. *Current through End of 2007 Regular Session.*

(a) No person shall follow, engage in or hold himself out as engaged in the practice as an embalmer unless licensed to do so by the Alabama Board of Funeral Service. The board hereby is granted authority to issue licenses to embalmers.

(b) All persons shall qualify for examination in accordance with the provisions of this chapter and shall be licensed as an embalmer only after due examination by the board and the payment of an examination and license fee to be established by the board, not to exceed \$100.00.

(c) In addition, the board shall establish and charge a reasonable examination fee, based on actual costs, for each applicant who sits for an examination, however, in no event shall the fee exceed \$25.00 above the actual cost of preparing and administering such exam.

(Acts 1975, No. 214, p. 705, § 10; Acts 1981, No. 81-200, p. 234, § 4; Acts 1981, No. 81-709, p. 1190, § 1; Acts 1991, No. 91-196, § 3.)

§ 34-13-91. Application for examination. *Current through End of 2007 Regular Session.*

The applicant for an embalmer's license shall make application to the board and shall present himself at the next meeting of the board for the examination of applicants. The application must be in writing and verified on a form provided by and addressed to the board and must be accompanied by the prescribed fee and by affidavits of at least two licensed embalmers to the effect that the applicant is of good moral character and has met all qualifications required for examination for license as prescribed by this chapter.

(Acts 1975, No. 214, p. 705, § 16.)

§ 34-13-92. Qualifications of applicants for license. *Current through End of 2007 Regular Session.*

In order to qualify for a license as an embalmer, the applicant shall:

(1) Be a citizen of the United States;

(2) Be over 18 years of age;

(3) Be of good character;

(4) Have completed a two-year course of apprenticeship under an embalmer or embalmers licensed and engaged in practice as an embalmer in this state, and the applicant shall have completed the required course of apprenticeship within a period of three consecutive years, excluding time lost by interruption caused by the active duty of the applicant in the military service of the United States or its allies during war or national emergency and excluding time lost by interruptions which the board deems excusable as caused by circumstances beyond the control of the applicant;

(5) Have completed a course of instruction in an embalming school or college which has been approved by the board as defined in Section 34-13-50; and

(6) Have completed the course of apprenticeship not more than two years before the date of examination, excluding time lost under the circumstances mentioned in subdivision (4) of this section.

(Acts 1975, No. 214, p. 705, § 17; Acts 1983, No. 83-746, p. 1235, § 1.)

§ 34-13-93. Examination of applicant for license. *Current through End of 2007 Regular Session.*

The board shall hold a public examination at least once each quarter for the purpose of examining applicants for embalmer's license, as prescribed in Section 34-13-22, at such time and place as the board may determine. Notice of the time and place of the meeting shall be sent to the various applicants by mail at least 15 days before the meeting or examination.

(Acts 1975, No. 214, p. 705, § 15.)

§ 34-13-94. Scope and conduct of examination. *Current through End of 2007 Regular Session.*

(a) The board shall examine applicants for an embalmer's license in the following subjects:

(1) Mortuary management and administration;

(2) Legal medicine and toxicology;

(3) Public health, hygiene and sanitary science;

(4) Mortuary science, to include embalming technique, in all aspects; chemistry of embalming, color harmony; discoloration, its causes, effect and treatment; treatment of special cases; restorative art; funeral management; and professional ethics;

(5) Anatomy and physiology;

(6) Chemistry, organic and inorganic;

(7) Pathology;

(8) Bacteriology;

(9) Sanitation and hygiene;

(10) Public health regulations; and

(11) Other courses of instruction in fundamental subjects as may be prescribed by the board.

(b) All examination papers shall be kept on file by the Alabama Board of Funeral Service for at least three years.

(c) To constitute a passing grade, an applicant must receive an average mark of not less than 70 percent on all subjects; provided, that where the applicant has received a mark of less than 70 percent in one or more subjects, such applicant shall not be passed, notwithstanding that his average mark may be higher than 70 percent.

(d) If the board is satisfied that the applicant has the requisite qualifications to practice the occupation of embalming, a license shall be issued to him authorizing him to practice such occupation until October 1 of that year, at which time the license may be renewed as prescribed in this chapter.

(Acts 1975, No. 214, p. 705, § 18.)

DIVISION 4. FUNERAL ESTABLISHMENTS.

§ 34-13-110. Operation through licensed director or embalmer; change of name. *Current through End of 2007 Regular Session.*

Any person, corporation, partnership, society or group owning or operating a funeral establishment coming within the provisions of this chapter may do so only through the services of a licensed funeral director or embalmer. No person not licensed as a funeral director or embalmer shall be permitted to perform the functions of a funeral director or embalmer as herein defined or hold himself out to the public as such by reason of his ownership in a funeral establishment or by reason of his ownership of stock owned in or office held in a corporation to own or operate a funeral establishment. After September 10, 1975, no firm or corporation authorized to own and operate a funeral establishment may change or amend its name or charter so as to include in its firm or corporate name the name of any person who is not individually licensed as a funeral director in this state; provided, that the provisions of this sentence shall not be applicable to the name of any firm or corporation owning or operating a funeral establishment on September 10, 1975, so long as such firm or corporation remains under the same ownership.

(Acts 1975, No. 214, p. 705, § 40.)

§ 34-13-111. License required; inspections; transfer of license. *Current through End of 2007 Regular Session.*

(a) No funeral establishment or branch thereof for the preparation, disposition and care of dead human bodies shall be opened or maintained unless duly licensed by the board. No funeral establishment or branch shall be moved

without obtaining a new funeral establishment license from the board.

(b) The board shall charge a fee of \$35.00 in addition to the license fee for the first inspection of any funeral establishment seeking a license under Section 34-13-72 made for the purpose of determining whether such funeral establishment has fulfilled the requirements for licensure hereunder. The board shall charge a fee of \$75.00 for each reinspection necessitated by failure of any funeral establishment to pass such first inspection. All funeral establishments and branches shall be inspected by the board, or its representatives, at least once annually, with an inspection fee of \$35.00, and shall meet and conform to the provisions of this chapter and to such other lawful standards and requirements as may be determined by rule of the board in furtherance of the provisions of this chapter; and, for failure to do so, the board may revoke such license in accordance with the procedure set forth in this chapter.

(c) Applications for transfer of a license to another location in the same county shall be made upon blanks furnished by the board and shall be accompanied by a fee of \$25.00. The fee for a new branch or location for a funeral establishment shall be \$250.00. Any change in ownership must be immediately reported to the board. (Acts 1975, No. 214, p. 705, § 44; Acts 1981, No. 81-200, p. 234, § 4; Acts 1981, No. 81-709, p. 1190, § 1; Acts 1983, No. 83-746, p. 1235, § 1.)

§ 34-13-112. Employment of embalmer or director by other establishments; supervision and control; licensing of establishment not to license embalmer or director. *Current through End of 2007 Regular Session.*

No application for a license of a funeral establishment shall be considered which does not show on the application that a licensed funeral director and licensed embalmer are employed by the establishment. This section shall not be construed to require a full-time licensed embalmer at each funeral establishment. No funeral establishment shall be licensed except upon the basis of a licensed funeral director. All embalming must be performed under a licensed embalmer, but such licensed embalmer shall not be restricted from working for more than one funeral establishment.

No licensed funeral director, based upon whose license or licenses a funeral establishment license has been issued, may serve as the regularly employed licensed funeral director at another funeral establishment which is owned by a different person, firm or corporation at the same time for the purpose of qualifying such other establishment under this chapter.

It is hereby declared to be the legislative intent of this chapter that every funeral establishment in this state shall be operated under the full charge, control and supervision of an individually licensed funeral director or a person licensed both as a funeral director and as an embalmer; provided, that this section shall not preclude an unlicensed person from being in charge of the bookkeeping or records of such an establishment. The name of the licensed person to be in charge of each funeral establishment shall be stated on the application for all licenses or renewal of such licenses.

The issuance of a license to operate a funeral establishment to a person who is not individually licensed as a funeral director or embalmer does not entitle said person to practice embalming or funeral directing, as defined by this chapter, it being the intent of this chapter that such practice may be performed only through individually licensed funeral directors and embalmers; and, in addition to all other grounds for suspension of a funeral establishment license as enumerated in this chapter, a funeral establishment license shall be revoked by the board upon hearing thereon if any person, whether owner, officer, stockholder or otherwise, who is connected with the funeral home shall perform any of the functions of a funeral director or embalmer as defined herein or shall hold himself out as a funeral director. (Acts 1975, No. 214, p. 705, § 43.)

§ 34-13-113. Application for license; inspection of establishment; issuance of license. *Current through End of 2007 Regular Session.*

(a) Application for a license to operate a funeral establishment shall be made in writing on a form provided by the board. The application shall be verified by the applicant or, if the applicant is a corporation, firm or other organization, by an officer or member thereof, and shall be accompanied by an application fee to be established by the board, not to exceed \$300.00. The application shall disclose:

- (1) The name and address of the establishment;
- (2) That the establishment is operated by a licensed funeral director and a licensed embalmer or a person licensed both as a funeral director and embalmer;
- (3) A description of the establishment's buildings, equipment and facilities;
- (4) That the establishment has a sanitary, properly equipped embalming room, a place for the conduct of funerals and a casket selection room stocked with an average selection of caskets; and
- (5) Such other information as may be required by the board.

(b) Upon receipt of said application, the board shall make inspection of the funeral establishment. If the board determines that the establishment meets the qualifications prescribed by law, it shall issue the license.

(Acts 1975, No. 214, p. 705, § 41; Acts 1981, No. 81-200, p. 234, § 4; Acts 1981, No. 81-709, p. 1190, § 1.)

§ 34-13-114. Reissuing license when name of establishment changed. *Current through End of 2007 Regular Session.*

An operator of a funeral establishment licensed under the provision of Section 34-13-113 and who desires to change the name of the establishment may have his license reissued to him, in the changed name, upon application to the board and payment of a fee of \$25.00.

(Acts 1975, No. 214, p. 705, § 23.)

§ 34-13-115. Revocation, suspension or refusal to renew license. *Current through End of 2007 Regular Session.*

(a) The board may revoke, suspend or refuse to renew a license issued to an operator of a funeral establishment as provided in this chapter.

(b) If, upon a complaint made to it or otherwise, the board has reason to believe that the operator of a funeral establishment has failed to comply with the provisions of this chapter or the regulations of the board, it shall conduct an investigation. If it appears to the board that there is reasonable ground to believe that the operator has failed so to comply, it shall conduct a hearing on the matter. Notice of the time and place of the hearing, setting forth the respects in which failure to comply is charged, shall be sent to the operator no later than 15 days prior to the date set for the hearing. The operator may have the assistance of counsel at the hearing.

(c) If, upon the hearing, the board finds that the operator has failed to comply with the provisions of this chapter or the regulations of the board, it may revoke, suspend or refuse to renew the license.

(Acts 1975, No. 214, p. 705, § 33.)

§ 34-13-116. Penalty for failure to register. *Current through End of 2007 Regular Session.*

Any person, firm, partnership, society, group or corporation who has control of a funeral home, mortuary, chapel or funeral establishment, as defined in this law, and fails to register same according to the provisions of this chapter, upon conviction, may be fined not less than \$300.00 nor more than \$500.00 for each violation, and each day that said funeral home, mortuary, chapel or funeral establishment is operated shall be deemed to be a separate and distinct violation of this chapter.

(Acts 1975, No. 214, p. 705, § 42.)

DIVISION 4A. CREMATION SERVICES.

§ 34-13-120. License required; affidavit of training, etc.; inspections; records *Current through End of 2007 Regular Session.*

(a) It shall be unlawful for any person, firm, corporation, association, or entity to operate a crematory or practice cremation without the crematory being licensed as a funeral establishment in accordance with this chapter.

(b) Any funeral establishment performing cremation services shall certify by affidavit to the board that any cremationist conducting cremations has received adequate and appropriate training or experience in the practice of cremation.

(c) The board shall adopt and enforce rules and regulations as may be reasonable and necessary for the operation of crematories to protect the health, welfare, and safety of the people of this state.

(d) The board shall inspect the records and premises of any funeral establishment operating a crematory. In making inspections, the board shall have access to all records, the crematory building, the cremation chambers or furnaces, and the storage areas for human remains before and after cremation, during regular office hours or the hours the crematory is in operation. No prior notification of the inspection is required to be given to the funeral establishment. If any funeral establishment performing cremation services fails to allow an inspection or any part thereof, it shall be grounds for the suspension or revocation of a license or other disciplinary action against the licensee, as the board may deem reasonable and necessary to the extent of the law. The board shall conduct annually a minimum of one unannounced inspection of each licensed funeral establishment performing cremation services.

(e) Each funeral establishment performing cremation services shall keep records as required by the board to assure compliance with all laws relating to the disposition of human remains and shall file annually with the board a report in the form prescribed by the board, describing the operations of the licensee, including the number of cremations made, the disposition thereof, and any other information as the board may, from time to time, require.

(f) Each funeral establishment performing cremation services shall report to the board any maintenance or inspections performed by the manufacturer within 30 days of the maintenance or inspection.

(g) A funeral establishment performing cremation services shall be subject to all local, state, and federal health and environmental protection requirements and shall obtain all necessary licenses and permits from the Alabama Board of Funeral Service, the federal and state Departments of Health and Human Services, and the state and federal Environmental Protection Agencies, or other appropriate local, state, or federal agencies.

(Act 2002-239, p. 498, § 3.)

§ 34-13-121. Cremation procedures; authorization; attestation of identity; records. *Current through End of 2007 Regular Session.*

(a) Human remains shall not be cremated within 24 hours after the time of death, unless death was a result of an infectious, contagious, or communicable disease and unless the disease is verified and the time requirement waived by a medical examiner, county health director, county coroner, or attending physician where the death occurred.

(b) A cremation authorization form prescribed by the board shall be signed by the authorizing agent and must accompany any request for cremation. A copy of the cremation authorization shall be presented with the body to the crematory before any cremation process may be initiated.

(c) It shall be disclosed to the family member serving as the authorizing agent that he or she, or his or her designee, may witness the transportation of the human remains to be cremated to the crematory. Every funeral establishment performing cremation services that prohibits relatives or the responsible party from viewing the cremation process shall disclose this fact in writing to the person or persons entitled to custody of the remains prior to the signing of any contract.

(d) An authorizing agent has the duty to inform the funeral director of the presence of a pacemaker or other potentially hazardous implant, including any toxic or explosive-type sealed implants in the human remains. The funeral director shall be responsible for ensuring that all necessary steps have been taken to remove the pacemaker before delivering the human remains to the crematory. Should the cremationist discover the presence of a pacemaker or other hazardous implants in the human remains, the cremationist shall arrange for the removal of the pacemaker or other hazardous implant.

(e) The simultaneous cremation of the human remains of more than one person within the same retort, without

the prior written consent of the authorizing agent, is prohibited. It is hereby the declared intent of this subsection that establishments performing cremations in accordance with this chapter may cremate only dead human remains.

(f) Upon the completion of each cremation, and insofar as is practicable, all of the recoverable residue of the cremation process shall be removed from the retort and placed in a separate container and may not be commingled with cremated remains of another person nor shall cremated remains of a dead human be divided or separated without the prior written consent of the authorizing agent.

(g) Each funeral establishment which offers or performs cremations shall maintain an identification system that ensures its ability to identify the human remains in its possession throughout all phases of the cremation process. Upon completion of the process, the cremationist must attest to the identity of the cremated remains, and the date, time, and place the cremation process occurred on a form issued by the board. The form shall accompany the human remains in all phases of transportation, cremation, and return of cremated remains.

(h) Each funeral establishment and cremationist which offers or performs cremations shall maintain a record of all cremations performed, which shall include the name of the decedent, the date of death, the date and time of the cremation, the signature of the cremationist performing the cremation, a copy of the authorization for cremation, a copy of the affidavit attesting to the cremation, and, if the cremation is performed for any other funeral establishment or entity, the identity of this establishment or entity.

(i) Human remains must be delivered to a crematory in a combustible cremation container. Human remains shall not be removed from the cremation container and the cremation container shall be cremated with the human remains, unless the authorizing agent has been informed in writing that the crematory does not cremate metal containers.

(Act 2002-239, § 3.)

§ 34-13-122. Disposition of cremated remains. *Current through End of 2007 Regular Session.*

(a) The authorizing agent shall provide to the funeral establishment which the cremation arrangements are made a signed statement specifying the ultimate disposition of the cremated remains, if known. A copy of this statement shall be retained by the funeral establishment offering or conducting the cremation.

(b) Cremated remains shall be shipped only by a method that has an internal tracing system available and that provides a receipt signed by the person accepting delivery.

(c) The authorizing agent is responsible for the disposition of the cremated remains. If, after 60 days from the date of cremation, the authorizing agent or his or her representative has not specified the ultimate disposition or claimed the cremated remains, the funeral establishment or entity in possession of the cremated remains may dispose of the cremated remains in a dignified and humane manner and in accordance with any state, county, or municipal laws or provisions regarding the disposal of cremated remains. A record of this disposition shall be made and kept by the entity making the disposition. Upon disposing of cremated remains in accordance with this section, the funeral establishment or entity in possession of the cremated remains shall be discharged from any legal obligation or liability concerning the cremated remains.

(Act 2002-239, § 3.)

DIVISION 5. APPRENTICES.

§ 34-13-130. Application for issuance of apprentice's certificate; term of apprenticeship. *Current through End of 2007 Regular Session.*

(a) Every person desiring to engage as an apprentice shall make application as a funeral director's apprentice or an embalmer's apprentice to the board upon a form provided by the board. The application shall state that the applicant is over the age of 16, holds a high school certificate or the equivalent, or is currently enrolled and actively working toward graduation from an accredited high school and is of good moral character. The application must be verified by the oath of applicant and be accompanied by a fee to be established by the board, not to exceed \$20.00. The executive secretary of the board shall, whenever it appears to him that no reason exists for the denial of an application and that the application is regular upon its face, have the power to issue to the applicant a certificate of apprenticeship, without submitting the application to the board. If, however, any doubt exists as to the qualifications of the applicant, the application shall be submitted to the board and may be accepted or rejected by a majority of the board. The period of apprenticeship of a funeral director's apprentice or an embalmer's apprentice must be performed in Alabama under the supervision of a funeral director or embalmer, respectively, licensed by the

Alabama Board of Funeral Service.

(b) The regular course of apprenticeship shall be two years, but the apprentice is entitled to two weeks time off each year, without leave of absence from the board. Any applicant for an apprentice certificate or license shall be credited with all time served as such as an apprentice embalmer or funeral director prior to September 10, 1975, upon filing of two affidavits confirming such service by a licensed embalmer or funeral director under whom such service was performed.

(Acts 1975, No. 214, p. 705, § 26; Acts 1981, No. 81-200, p. 234, § 4; Acts 1981, No. 81-709, p. 1190, § 1.)

§ 34-13-131. Annual renewal of certificate. *Current through End of 2007 Regular Session.*

A certificate of apprenticeship issued as provided for herein shall be signed by the apprentice and shall be renewable annually upon the payment by the holder by October 1 of each year of an annual renewal fee to be established by the board, not to exceed \$20.00. Failure to pay the renewal fee by the prescribed date of any year shall cause the certificate to become delinquent, in which case it shall be renewed only for good cause shown. No person may be granted a certificate of apprenticeship as funeral director's apprentice or embalmer's apprentice, respectively, for more than three consecutive years, excepting as provided. The board shall mail, on or before August 1 of each year, to each registered apprentice at his last known address, a notice that his renewal fee is due and payable and that, if not paid by October 1, his license will lapse.

(Acts 1975, No. 214, p. 705, § 27; Acts 1981, No. 81-200, p. 234, § 4; Acts 1981, No. 81-709, p. 1190, § 1.)

§ 34-13-132. Annual report of apprentices. *Current through End of 2007 Regular Session.*

All apprentices registered as provided in this chapter shall be under the supervision and control of the board and shall be required to report to the board annually on January 1, upon forms provided by the board, showing the work which such apprentices have performed during the annual period preceding the first of the month on which the report is made, including the number of hours served and the number of bodies the apprentice has assisted in embalming or otherwise prepared for disposition during such period. The information contained in the report shall be certified to as correct by the funeral director by whom the apprentice has been employed during such period.

(Acts 1975, No. 214, p. 705, § 28.)

§ 34-13-133. Leave of absence. *Current through End of 2007 Regular Session.*

The board has power to grant leaves of absence and to grant extensions thereof to apprentices registered under the provisions of this chapter. However, no credit shall be given to an apprentice upon his apprenticeship for the period during which he is absent from duty on leave, and no more than an aggregate of 12 months' leave of absence shall be granted to any apprentice during the term of his apprenticeship. Application for leave of absence and for extension thereof shall be made by the apprentice upon a form provided by and addressed to the board. Upon the termination of a leave of absence or any extension thereof, the apprentice shall report to the board the fact that he has resumed his duties as an apprentice and certified to by the funeral director under whom he has resumed his duties or by the embalmer under whom he is apprenticed, confirming this fact. Failure to so report within 30 days after the expiration date of any leave of absence or extension thereof shall automatically cancel the registration of the apprentice.

(Acts 1975, No. 214, p. 705, § 29.)

§ 34-13-134. Grounds for suspension and revocation of certificates; reregistration when certificate has lapsed or is revoked. *Current through End of 2007 Regular Session.*

(a) The board has power to suspend or revoke a certificate of apprenticeship, after notice and upon hearing, where the apprentice is guilty of any of the following acts or omissions:

- (1) Failure to devote not less than an average of 30 hours per week to the duties of his apprenticeship;
- (2) Failure to make an annual report to the board as required by this chapter;
- (3) Absence from duty except on vacation for an aggregate of more than 10 days in any six months or 20 days in any year, without leave of absence granted by the board;
- (4) Gross immorality;

- (5) Being on duty as an apprentice while under the influence of liquor or illegal drugs;
- (6) Disobedience of proper orders or instructions of his superiors;
- (7) Violation of any provision of this chapter or any rule or regulation of the board made under this chapter;
- (8) Soliciting business for a funeral director or for any embalmer; or
- (9) Fraud or misrepresentation in obtaining a certificate of registration as an apprentice.

(b) An apprentice who has allowed his certificate of apprenticeship to lapse or who has had his certificate of apprenticeship suspended or revoked may, within one year after such suspension or revocation, make application for registration but not more than two such registrations shall be allowed by the board. The board may, when the circumstances warrant, allow an apprentice credit under a reregistration for time actually served under a previous registration; except, that if the previous registration has been suspended or revoked upon any of the grounds set forth in subsection (a) of this section, not more than 75 percent of the time previously served shall be credited on the reregistration.

(Acts 1975, No. 214, p. 705, § 30.)

ARTICLE 4. DONOR EYE ENUCLEATION LICENSES.

§ 34-13-150. Issuance. *Current through End of 2007 Regular Session.*

The Board of Funeral Service is authorized to issue a donor eye enucleation license to any embalmer or funeral director who makes written application to the Board of Funeral Service and complies with its standards, measures and procedures, provided such applicant possesses the educational qualifications, standards of proficiency and fitness prescribed by the board.

(Acts 1976, No. 586, p. 798, § 1.)

§ 34-13-151. Promulgation of standards, procedures, regulations, etc., by Board of Funeral Service. *Current through End of 2007 Regular Session.*

(a) The Board of Funeral Service is authorized to establish and promulgate standards, measures, procedures and regulations necessary to assure that any licensee under this article possesses the knowledge and technical skills to perform donor eyes enucleations acceptable as good ophthalmological and pathological procedure for the purposes of prohibiting unnecessary mutilation.

(b) The Board of Funeral Service is authorized to further prescribe, establish and promulgate any standards and regulations necessary to effect the provisions of this article.

(Acts 1976, No. 586, p. 798, §§ 2, 4.)

§ 34-13-152. Compliance by licensee with Uniform Anatomical Gift Act. *Current through End of 2007 Regular Session.*

Any person who holds a donor eye enucleation license shall comply with the applicable provisions of the "Alabama Uniform Anatomical Gift Act."
(Acts 1976, No. 586, p. 798, § 3.)

Board Members

BOARD OF DIRECTORS

THOMAS MAYE
MONROEVILLE

JOE LEWIS
OZARK

TONY TAYLOR
PHENIX CITY

JASON MAISE
GADSDEN

JOHN R. TURDY
HUNTSVILLE

DEBBIE MARTIN
CENTREVILLE

ROBERT L. KIDD, JR.
DEMOPOLIS



STATE OF ALABAMA

ALABAMA BOARD OF FUNERAL SERVICE

ALABAMA STATEHOUSE
SUITE 21

11 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36130

(334) 242-4049

STAFF

WARREN S. HIGGINS
EXECUTIVE SECRETARY

LORENZO WRIGHT
ASSOCIATE EXECUTIVE SECRETARY

SHERRY DAWSON
ADMINISTRATIVE ASSISTANT

Mailing Address:
P.O. Box 309522
Montgomery, AL 36130-9522

June 26, 2008

Tony Yarbrough
Examiners of Public Accounts
State of Alabama
Montgomery, AL 36130

Dear Mr. Yarbrough,

The following is a list of the members of our board along with their addresses, dates served, and race.

District One:
Thomas Maye
P.O. Box 487
Monroeville, AL 36461
January 1, 2007-December 31, 2008; Black

District Two:
Joe Lewis
P.O. Box 1434
Ozark, AL 36361
January 1, 2007-December 31, 2008; Black

District Three:
Tony Taylor
P.O. Box 2333
Phenix City, AL 36868
January 1, 2006-December 31, 2009; Black

District Four:
Jason Maise
P.O. Box 460
Gadsden, AL 35902
January 1, 2008-December 31, 2009; White
Treasurer

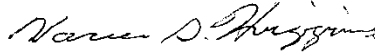
District Five:
John Purdy
2320 Bob Wallace Avenue SW
April 9, 2007-December 31, 2008; White
Secretary

District Six:
Debbie Martin
P.O. Box 456
January 1, 2006-December 31, 2009; White
Vice-Chair

District Seven:
Robert Kidd, Jr.
P.O. Box 404
Demopolis, AL 36732
January 1, 2004-December 31, 2005; White
January 1, 2008-December 31, 2009

I trust this information is sufficient. I can also state with relative certainty that I am not related to any of the aforementioned members.

Sincerely,



Warren S. Higgins
Executive Secretary

WSH

RESPONSE TO SIGNIFICANT ITEMS

BOARD OF DIRECTORS

THOMAS MAYE
MONROEVILLE

JOE LEWIS
OZARK

TONY TAYLOR
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JASON MAISE
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ASSOCIATE EXECUTIVE SECRETARY

SHERRY DAWSON
ADMINISTRATIVE ASSISTANT

Mailing Address:
P.O. Box 309522
Montgomery, AL 36130-9522

September 1, 2008

John Norris
Examiners of Public Accounts
P.O. Box 302251
Montgomery, AL 36130

Dear Mr. Norris,

The following is in response to the items reported unresolved from the previous audit:

Item 2: When the public meeting notice provisions were originally passed, I had a personal conversation with the Secretary of State, who told me that a seven day notice was sufficient to post the meetings. In addition, when posting, the agency is asked to list the agenda of the meeting, which in our case, is not finalized until one week prior to the meeting. Also, because we are located in the statehouse and use legislative committee rooms for our meetings, we cannot guarantee the actual room, especially when the legislature is in session, until one week before the meeting.

Item 3: We concur with the finding and as well as the current status as reported to the examiner.

Item 5: We concur with the finding and have accordingly instituted a new policy of making deposits on Friday of each week.

Item 6: We contend that an administrative rule is not necessary to charge a fee that is established by statute. In fact, when we were not charging the fee provided for in the statute, a representative of your department, Chuck Davenport, insisted that we immediately start charging the fee pursuant to the statute.

Item 7: Due to our small staff, "separation of duties" is completely impractical if not impossible. This condition has existed since I started with the Board in 1982. Until last year, every examiner from your department has seen and understood these conditions and accordingly was never seen as a problem. The prior report states "this condition

unnecessarily increases the risk of loss or misuse of funds.” What the report does not reflect is that in 26 years of these conditions there has never been one occurrence of loss or misuse of funds.

Item 8: This apparently was an oversight on our part. We did amend the applications to include the social security number on license applications. Since being informed of this oversight by the examiner, we have added a space for the social security number on the original establishment application.

Item 9: We concur with the finding and have instituted a policy of submitting payment voucher on the 20th of each month.

Item 10: We disagree with the conclusion of your department. The Board did approve the identification method of allowing ankle bracelets.

Item 11: We concur with the current status stated in the current report but continue to dispute the findings of the previous audit.

Item 12: The information required by statute is being maintained by this office. In addition, depending on the definition of “pamphlet”, we have always kept and distributed booklets of our laws and regulations. Every single examiner since 1982 recognized that until last year’s review.

Item 15: The statute section in question also allows the Board to adopt, in whole or in part, the exams proposed by the American Board of Funeral Service Education. Since the Board’s inception in 1976, we have adopted the American Board’s format of testing, which requires us to follow their policies and procedures. This format is a uniformed testing procedure that is followed by almost every state. For our state to vary from this format and test independently would burden the licensees who were licensed by a testing procedure that’s different from the rest of the country. Under the current system, a licensee can apply and be granted licensure in another state through reciprocity. If Alabama had a different testing procedure, those licensees would have to go through the entire apprenticeship and testing procedures when applying for license in another state. Once again, this is the same procedure that has been practice for a long as this agency has existed, but was never in question until last year’s review.

Item 17: This finding questions the Board’s operation and its effectiveness for failing to embrace electronic technology. The staff takes advantage of technology that aids us in day to day office duties when feasible and cost effective. Older procedures that have worked sufficiently are not scraped just for the sake of being on the technological cutting edge, which is most times very costly. The staff is however currently under contract with ISD to have a Website established.

Item 18: Rest assured we monitor any operation that is practicing funeral directing, embalming, or cremation. A listing on the Internet or the Yellow Pages does not make a funeral home. A building at a specific street address most certainly does. If

there is any indication that an operation is practicing any of the aforementioned professions that is not currently licensed by this Board, we have not been advised of these locations that the previous examiner seems so certain to exist. Accordingly we strongly dispute this finding.

Item 21: We concur with the finding. I have become so accustomed to the normal budgeting procedures that I have had a difficult time grasping the duplicating SMART plan. However, I have had contact with the governor's office to take the necessary steps to comply with this finding.

Item 22: This was a survey of funeral homes by a consumer group concerning compliance of the FEDERAL Trade Commission funeral rule of which our enabling statute gave the Board no jurisdiction. The FTC is responsible for enforcement. How funeral home compliance of a *FEDERAL* rule became a significant item in a report of a *STATE* agency is still a mystery to me.

In conclusion, I would like to take this opportunity to commend Mr. Yarbrough for the manner in which he conducted this audit. His demeanor created an atmosphere that allowed us to productively work together. He displayed an attitude that we were all in this together in making state government run properly and that whatever he could do help in accomplishing that goal, he would. Much unlike the previous examiner who came in on day one and stated "You're not a problem agency...yet" and then proceeded to conduct herself in a way that we were guilty until proven innocent beyond **all** doubts that she had conceived in her mind. We still maintain that these Gestapo tactics were irresponsible and reckless that resulted in unwarranted findings, which basically left me personally demoralized in performing my duties. To the contrary, Mr. Yarbrough's approach has actually inspired me to take every action necessary to correct these findings. I can only hope that you might review your department's personnel to ensure that all agencies are dealt with in a manner that was displayed by Mr. Yarbrough.

Sincerely,

A handwritten signature in dark ink, appearing to read "Warren S. Higgins". The signature is fluid and cursive, with a prominent initial "W".

Warren S. Higgins
Executive Secretary

WSH